

Tuesday
November 29, 1988

Registered



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for \$340 per year in paper form; \$195 per year in microfiche form; or \$37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound, or \$175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

Agricultural Marketing Service

PROPOSED RULES

Dairy promotion program:

National Dairy Promotion and Research Board;
composition change, 47958

Agriculture Department

See Agricultural Marketing Service; Food Safety and
Inspection Service; Rural Electrification Administration

Army Department

See Engineers Corps

Civil Rights Commission

NOTICES

Meetings; State advisory committees:
New Jersey, 48003

Commerce Department

See Foreign-Trade Zones Board; International Trade
Administration; Minority Business Development
Agency; National Oceanic and Atmospheric
Administration

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Burma, 48008
El Salvador, 48008
Mexico, 48009
Thailand, 48009

Consumer Product Safety Commission

NOTICES

Settlement agreements:

Mapco Alaska Petroleum Inc., 48010

Defense Department

See also Engineers Corps

NOTICES

Agency information collection activities under OMB review,
48012

Federal Acquisition Regulation (FAR):

Agency information collection activities under OMB
review, 48035
(2 documents)

Education Department

RULES

Educational research and improvement:

Territorial teacher training assistance program, 47953

PROPOSED RULES

Elementary and secondary education:

Christa McAuliffe fellowship program
Correction, 47977

NOTICES

Agency information collection activities under OMB review,
48035

Meetings:

National Assessment Governing Board, 48036

Energy Department

See Federal Energy Regulatory Commission

Engineers Corps

RULES

Danger zones and restricted areas:

Albermarle Sound, NC, 47952

Environmental Protection Agency

RULES

Air pollution; standards of performance for new stationary
sources:

Magnetic tape manufacturing industry

Correction, 47955

PROPOSED RULES

Air quality implementation plans; approval and
promulgation; various States:

Tennessee, 47978

Superfund program:

National oil and hazardous substances contingency
plan—

National priorities list update, 47980

Off-site response actions; procedures for planning and
implementing, 48218

Water pollution control:

Ocean dumping; site designations—

Deepwater Industrial Waste Disposal Site; Atlantic

Ocean offshore Cape May, NJ, 47979

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

RULES

Airworthiness directives:

Bell, 47944

Fokker, 47943

McDonnell Douglas, 47942

IFR altitudes, 47945

PROPOSED RULES

Airworthiness directives:

CASA, 47969

Transition areas, 47970

NOTICES

Airport noise compatibility program:

Hartsfield Atlanta International Airport, GA, 48055

Noise exposure map—

McCarran International Airport, NV, 48057

McGhee Tyson Airport, TN, 48058

Nashville International Airport, TN, 48058

Santa Maria Public Airport, CA, 48058

Sky Harbor International Airport, AZ, 48056

Federal Communications Commission

NOTICES

Agency information collection activities under OMB review,
48038

Emergency broadcast system:

Closed circuit test, 48038

Federal Deposit Insurance Corporation

RULES

Conflict of interests, 47929

NOTICES

Privacy Act:

Systems of records, 48038

Federal Energy Regulatory Commission

RULES

Practice and procedure:

Petitions for Commission review; filing procedure, 47949

NOTICES

Meetings: Sunshine Act, 48065

Applications, hearings, determinations, etc.:

K N Energy, Inc., 48037

Northern Natural Gas Co., 48037

West Texas Gas, Inc., 48038

Federal Home Loan Bank Board

RULES

Federal Savings and Loan Insurance Corporation:

Acquisition of control of insured institutions; technical amendments, 47941

NOTICES

Meetings:

Federal Savings and Loan Advisory Council, 48040

Federal Maritime Commission

NOTICES

Agreements filed, etc., 48040, 48041
(3 documents)

Federal Reserve System

NOTICES

Applications, hearings, determinations, etc.:

First Institutional Service Corp., 48042

Ross, Thomas D., et al., 48042

Financial Management Service

See Fiscal Service

Fiscal Service

NOTICES

Surety companies acceptable on Federal bonds:

Fidelity & Guaranty Insurance Co., 48063

Nordia Insurance Co., 48063

Food Safety and Inspection Service

RULES

Meat and poultry inspection:

Imported products; list of eligible countries—
Mexico, 47927

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:

Louisiana, 48003

General Services Administration

NOTICES

Federal Acquisition Regulation (FAR):

Agency information collection activities under OMB
review, 48035
(2 documents)

Health and Human Services Department

See also Human Development Services Office; National
Institutes of Health

NOTICES

Meetings:

President's Council on Physical Fitness and Sports, 48043

Human Development Services Office

NOTICES

Grants and cooperative agreements; availability, etc.:

Social services block grant program; Federal allotments to
States, 48043

Interior Department

See Land Management Bureau; Minerals Management
Service; National Park Service; Surface Mining
Reclamation and Enforcement Office

International Trade Administration

NOTICES

Antidumping and countervailing duties:

Administrative review requests, 48004

Export trade certificates of review, 48005

Short supply determinations:

Rotogravure doctor blade steel strip and T-4 feeler gauge
steel, 48005

Justice Department

NOTICES

Pollution control; consent judgments:

Metropolitan Dade County, FL, 48048

Labor Department

See Occupational Safety and Health Administration

Land Management Bureau

RULES

Public land orders:

South Dakota, 47955

NOTICES

Agency information collection activities under OMB review,
48044

Management framework plans, etc.:

Colorado, 48044

Realty actions; sales, leases, etc.:

Arizona, 48045

Maritime Administration

NOTICES

Applications, hearings, determinations, etc.:

International Shipholding Corp., 48059

Merit Systems Protection Board

RULES

Practice and procedures; address change, 47927

Minerals Management Service

NOTICES

Environmental statements; availability, etc.:

Norton Sound OCS; lease sale, 48045

Minority Business Development Agency

NOTICES

Business development center program applications:

Virginia, 48005

Monitored Retrievable Storage Review Commission

NOTICES

Public Document Room; establishment, 48049

National Aeronautics and Space Administration

RULES

Acquisition regulations, 47956

Space transportation system; nonscientific payloads, 47949

NOTICES

Agency information collection activities under OMB review, 48035
 (2 documents)
 Federal Acquisition Regulation (FAR):
 Agency information collection activities under OMB review, 48049
 (2 documents)

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:
 Occupant crash protection—
 Rear seat lap/shoulder belts, 47982

National Institutes of Health**NOTICES**

Meetings:
 Acquired Immunodeficiency Syndrome Program Advisory Committee, 48043
 Human Genome Program Advisory Committee, 48043

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:
 Pacific Coast groundfish, 47956

PROPOSED RULES

Fishery conservation and management:
 Atlantic surf clam and ocean quahog, 48002
 Bering Sea and Aleutian Islands groundfish, 47998
 Gulf of Alaska groundfish, 47993

NOTICES

Permits:
 Foreign fishing, 48006

National Park Service**NOTICES**

Meetings:
 Farmington River Study Committee, 48046
 National Register of Historic Places:
 Pending nominations—
 Connecticut et al., 48046

Neighborhood Reinvestment Corporation**NOTICES**

Meetings; Sunshine Act, 48066

Nuclear Regulatory Commission**NOTICES**

Agency information collection activities under OMB review, 48049
 Meetings:
 Reactor Safeguards Advisory Committee, 48050
 Meetings; Sunshine Act, 48067
Applications, hearings, determinations, etc.:
 Virginia Electric & Power Co., 48050

Occupational Safety and Health Administration**PROPOSED RULES**

Shipyards employment safety and health standards:
 Access and egress requirements, 48130
 Explosive and other dangerous atmospheres in vessels and vessel sections, 48092
 Fall protection, 48168
 Personal protective equipment, 48150
 Scaffolds, 48182
 Welding, cutting, and heating, 48111

Personnel Management Office**NOTICES**

Agency information collection activities under OMB review, 48051, 48052
 (2 documents)

Postal Service**PROPOSED RULES**

Freedom of Information Act; implementation:
 Computer record retrieval; fees, 47977

Presidential Documents**PROCLAMATIONS**

Imports and exports:
 Cheese imports from Uruguay; correction (Proc. 5916), 48241
 Special observances:
 Book Week, National (Proc. 5914), 48237
 Vocational-Technical Education Week (Proc. 5915), 48239

Public Health Service

See National Institutes of Health

Railroad Retirement Board**NOTICES**

Agency information collection activities under OMB review, 48052

Rural Electrification Administration**PROPOSED RULES**

Telephone borrowers:
 Accounting system requirements, 47959

Securities and Exchange Commission**NOTICES**

Agency information collection activities under OMB review, 48052

Small Business Administration**NOTICES**

Meetings; regional advisory councils:
 Florida, 48053
 Kansas, 48053
 Missouri, 48053
 Oklahoma, 48053

State Department**PROPOSED RULES**

Victims of terrorism; compensation, 47970

State Justice Institute**NOTICES**

Meetings; Sunshine Act, 48067

Surface Mining Reclamation and Enforcement Office**RULES**

Permanent program and abandoned mine land reclamation plan submissions:
 Indiana, 47950

Tennessee Valley Authority**NOTICES**

Meetings; Sunshine Act, 48067

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Transportation Department

See also Federal Aviation Administration; Maritime Administration; National Highway Traffic Safety Administration

NOTICES**Aviation proceedings:**

- Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 48054
- Hearings, etc.—
- U.S.-Mexico all-cargo service proceeding, 48054

Treasury Department

See also Fiscal Service

NOTICES**Notes, Treasury:**

- AH-1990 series, 48060
- H-1994 series, 48061

United States Information Agency**NOTICES**

- Grants and cooperative agreements; availability, etc.: Summer English Teaching Institute for South African educators, 48063

Separate Parts In This Issue**Part II**

Department of Labor, Occupational Safety and Health Administration, 48092

Part III

Environmental Protection Agency, 48218

Part IV

The President, 48237

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

- 5908 (See Proc. 5916).....48241
- 5914.....48237
- 5915.....48239
- 5916.....48241

5 CFR

- 1201.....47927

7 CFR**Proposed Rules:**

- 1150.....47958
- 1770.....47959

9 CFR

- 327.....47927

12 CFR

- 336.....47929
- 574.....47941

14 CFR

- 39 (3 documents).....47942-47944

- 95.....47945

- 1214.....47949

Proposed Rules:

- 39.....47969
- 71.....47970

18 CFR

- 385.....47949

22 CFR**Proposed Rules:**

- 192.....47970

29 CFR**Proposed Rules:**

- 1915 (6 documents).....48092, 48111, 48130, 48150, 48168, 48182

30 CFR

- 914.....47950

33 CFR

- 334.....47952

34 CFR

- 790.....47953

Proposed Rules:

- 237.....47977

39 CFR**Proposed Rules:**

- 265.....47977

40 CFR

- 60.....47955

Proposed Rules:

- 52.....47978
- 228.....47979
- 300 (2 documents).....47980, 48218

43 CFR**Public Land Order:**

- 6689.....47955

48 CFR

- 1831.....47956

49 CFR**Proposed Rules:**

- 571.....47982

50 CFR

- 663.....47956

Proposed Rules:

- 611 (2 documents).....47993, 47998
- 652.....48002
- 672.....47993
- 675.....47998

Rules and Regulations

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: To reflect the move of the New York Regional Office (NYRO), the Merit Systems Protection Board is amending its rules of practices and procedures by changing NYRO's address as listed in 5 CFR Part 1201, Appendix II.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Kelleher, Deputy Executive Director for Regional Operations, (202) 653-7980.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly, the Board amends Part 1201 as follows:

PART 1201—[AMENDED]

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Appendix II to Part 1201 is amended by revising item number 6 in the second paragraph to read as follows:

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

6. New York Regional Office, 26 Federal Plaza, Suite 3137-A, New York, New York 10278-0022 (New Jersey) [Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union and Warren

Counties], New York, Puerto Rico, Virgin Islands).

Date: November 23, 1988.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 88-27401 Filed 11-28-88; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 88-006F]

Restoration of Mexico to the List of Countries Eligible To Import Meat Products Into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service is amending the Federal meat inspection regulations by restoring Mexico to the list of countries from which cattle, sheep, swine, and goat products are eligible to be imported into the United States. Reviews of Mexico's laws, regulations and other materials, and on-site reviews of its inspection system indicated that the system is acceptable pursuant to the Federal Meat Inspection Act and regulations thereunder. Thirty-six comments were received in response to the proposal. After careful consideration of the comments received, FSIS is adopting the proposal as published. This action will enable meat products from certified establishments in Mexico to be imported into the United States.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this rule is not a "major rule." It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in costs or prices for consumers, individual

industries, Federal, State or local government agencies, or geographic regions, and will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule will restore Mexico as a country from which meat products are eligible to be imported into the United States. However, it is estimated that only approximately 2.5 million pounds of meat products will be imported annually. This amount represents only about .03 percent of domestic production, based on fiscal year 1987 data.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, because the amount of product estimated to be imported represents only .03 percent of domestic production, based on fiscal year 1987 data. The demand for boneless beef for domestic use exceeds the domestic supply; thus, no affect on those domestic producers of boneless beef is anticipated.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service (FSIS) the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat products appear in Part 327 of the Federal meat inspection regulations (9 CFR Part 327). In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat products into the United States may become eligible to do so.

The Agriculture and Food Act of 1981 (Farm Bill) amended section 20 of the FMIA (21 U.S.C. 620) to clarify that

imported meat products must meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. It directs the Secretary to enforce the Farm Bill through random inspections of imported product at ports of entry for residues and species verification and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses for residues at points of slaughter in accordance with methods approved by the Secretary. Regulations implementing the Farm Bill requirements were published in the *Federal Register* on February 10, 1983 (48 FR 6091). All countries eligible to import product into the United States were notified of these regulations.

Residue testing information is collected from exporting countries on an annual basis by the Department. Using this and additional information collected during regular reviews of the meat inspection systems of exporting countries, notice was given in July 1983 as to specific deficiencies in residue and species verification programs in each exporting country, informing them that all corrections must be made by January 1, 1984. A review of laboratory facilities, equipment, and methodology was made during December 1983 to determine the compliance of exporting countries with the residue and species verification requirements.

For a country's inspection system to be considered "at least equal to" that of the United States, that country had to have provided for testing of appropriate tissues (fat, kidney, muscle and/or liver) for chlorinated hydrocarbons, organophosphates, polychlorinated biphenyls (PCB's), trace metals, antibiotics, and hormones, if applicable, using a method approved by the Secretary. In addition, countries had to conduct an approved species verification program. Since that time, additional testing requirements have been added for sulfa drugs and chloramphenicol.

The Administrator has authority to withdraw the eligibility of a foreign country to import meat products into the United States, under § 327.2(a)(4) (9 CFR 327.2(a)(4)), whenever the Administrator determines that the system of meat inspection maintained by such foreign country does not assure compliance with requirements "at least equal to" all the inspection, building construction standards, and other requirements of the FMIA and the regulations as applied to official establishments in the United States.

Amendments to § 327.2 (b) and (c) of the Federal meat inspection regulations

(9 CFR 327.2 (b) and (c)) were published in the *Federal Register* on February 15, 1984, withdrawing the eligibility of Mexico to export meat products to the United States. Mexico lost its eligibility because no testing was being performed for chlorinated hydrocarbons, organophosphates, PCB's, trace metals, hormones and antibiotics; and no approved species verification program was being conducted. At that time, it was stated that when the Administrator of FSIS is satisfied that the meat inspection officials of Mexico have corrected the deficiencies in their residue testing and species verification programs, and that the inspection system meets all of the provisions of the FMIA and the regulations promulgated thereunder, Mexico may again be added to the list of countries eligible for importation of cattle, sheep, swine, and goat products into the United States.

Because a considerable amount of time transpired before Mexico corrected the deficiencies in its residue testing and species verification programs, it was necessary for Mexico to provide current information that its inspection system meets all of the provisions of the FMIA and, therefore, could be considered as eligible to import meat products into the United States.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of the inspection system operations. The eligibility process begins when the foreign country provides FSIS with complete information about its inspection system.

FSIS assists the country in organizing this material by providing questionnaires in five risk areas: contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations, or publish special directives to achieve equivalency with U.S. requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multidisciplinary team to evaluate all aspects of the country's program. When all requirements of the FMIA are satisfied, the country is considered eligible to import meat products into the United States.

Document Review

As part of the document review process, a country's laws are evaluated to assure, among other things, that they provide for inspection and certification of the wholesomeness of product intended for export to the United States; that there are adequate controls over ineligible product to prevent its export; and that the country has adequate controls to prevent persons convicted of wrongdoing (i.e., (1) more than one conviction of any law, other than a felony, based upon the acquiring, handling or distributing of unwholesome, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food, or (2) any felony) from being connected with a firm exporting product to the United States.

A country's legal authority and the regulations thereunder must impose requirements "at least equal to" those of the United States with respect to, among other things, the following areas: (1) Ante-mortem inspection of animals and post-mortem inspection of animal carcasses; (2) official control by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities and product preparation by competent, qualified inspection personnel employed, supervised and paid by the country's central government; (4) separation of operations in certified plants from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified plants; (6) official controls over condemned product; (7) reinspection of boneless meat; and (8) control over chemical and drug residues in meat and/or poultry products prepared for export to the United States.

On-site Reviews

The second process in assessing a country's equal to status, performed after the document review has proved to be satisfactory, is on-site reviews of aspects of the system including laboratories and individual plants within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operations.

Mexico—Review Results

At the request of Mexico, FSIS personnel recently completed a review of Mexico's meat inspection system. Through the interchange of questions, answers and documentation over a period of several months, FSIS

personnel have determined that the laws and regulations concerning the meat inspection system of Mexico can be judged to be at least equal to those of the United States. The document review phase revealed that the following areas needed more detailed evaluation and would be scrutinized during the on-site reviews. These areas included methods for compliance and prevention of economic fraud, and the adequacy of programs designed to test for residues.

During May 1987, an FSIS review team visited five meat plants and Mexico's residue-testing laboratory. After observing the facilities and holding discussions with various plant, laboratory and inspection personnel, the FSIS review team concluded that the Mexican meat inspection program meets the basic minimum requirements for an "at least equal to" determination. However, the team did note two areas where improvements were needed. These areas were (1) control programs comprising the compliance/economic fraud risk area, and (2) some aspects of the residue control programs. FSIS has since received confirmation and documentation from the Mexican Ministry of Agriculture that the necessary improvements in these areas have been made.

After reviewing all of the documents submitted by Mexico and evaluating the findings of the on-site reviews and the subsequent written assurances of government officials, FSIS has determined that the meat inspection system of Mexico is adequate to assure, with respect to establishments within Mexico preparing product for export to the United States, compliance with requirements the same as those applicable to official establishments within the United States which prepare meat products, and that reliance can be placed upon certificates required under the FMIA from authorities of Mexico.

Accordingly, FSIS is amending § 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) to restore Mexico to the list of countries from which meat products may be eligible for importation into the United States.

Although a foreign country may be listed as approved for importation of meat products, the meat products of such foreign country must also comply with other Federal laws including restrictions under Title 9 of the Code of Federal Regulations, Part 94, the Animal and Plant Health Inspection Services' regulations (9 CFR Part 94), relating to the importation of meat products from foreign countries into the United States.

Comments on the Proposed Rule

FSIS received 36 comments in response to the proposal (53 FR 27866): 17 from industry members, 11 from Mexican government agencies, five from trade associations, two from U.S. state commissioners and one from a research foundation. The commenters offered unanimous support for the proposed rule, citing the new jobs which would be created, the increase of trade in other areas, and the overall improved relationship between the two countries.

The Proposal

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

1. The authority citation for Part 327 would continue to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 504, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) would be amended by adding alphabetically "Mexico" to the list of countries eligible to import cattle, sheep, swine and goat products into the United States.

Done at Washington, DC on November 23, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-27425 Filed 11-28-88; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final Rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") hereby adopts as a final rule a revision of Part 336 to its rules and regulations, 12 CFR Part 336, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include identifying certain employees subject to reporting requirements and credit restrictions by position description series codes; clarifying the permissible conditions of acceptance of food, refreshments, and entertainment; modifying existing credit restrictions with regard to credit cards; permitting renegotiation of existing debt on the same terms and conditions as are

offered to the general public, conditioned upon disqualification from participation in matters affecting the creditor; shortening the term of some credit prohibitions; clarifying the prohibitions on purchase of liquidation assets, FDIC property, and property of insured banks; reporting of family member employment by firms which do business with the FDIC; decentralizing of reporting to the regional or consolidated office level; eliminating semiannual reports of indebtedness; and adding a new subpart to address post-employment representational restrictions.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Katherine A. Corigliano, Ethics Program Manager, at (202) 898-7272 or Donald L. Rosholt, Deputy Ethics Counselor, at (202) 898-7271.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the FDIC issued for public comment a proposed revision to Part 336 of its rules and regulations, 12 CFR Part 336, which part governs standards of ethical and other conduct of FDIC employees (53 FR 26262). Further, comment was directly solicited from the union representing FDIC employees, and each employee was mailed a copy of the proposed rule. In addition, the Office of Government Ethics ("OGE") and the Department of Justice reviewed the regulation for consistency with applicable law and regulation.

In addition to written comments from the OGE, four written comments were received, all from FDIC employees. One comment stressed the importance of the proposed revisions regarding extensions of credit to examiners and the elimination of the Confidential Report of Indebtedness as a separate, semiannual filing for most employees. Another commenter, suggesting that the proposed regulation was inequitable to employees, requested that examiners be allowed to obtain credit cards from state nonmember banks located within their region of assignment and then be disqualified from working on matters affecting such banks. One commenter suggested that the proposed regulation be revised to call employees' attention to prohibitions against sexual harassment. Another proposed that a Division of Liquidation employee not be disqualified from matters pertaining to his or her creditor if the extension of credit had become prohibited as a result of the original creditor institution's failure or receipt of financial assistance from the FDIC.

After considering all comments, the Board of Directors has determined to

adopt the regulation substantially in the form proposed, with the following changes:

1. The definition of "appear personally" has been deleted because the term is not used in the text of the regulation. Instead, at the recommendation of the OGE, a new definition of "appearance" has been added, which tracks the language of the OGE's model regulation at 5 CFR 737.5(b)(3).

2. The proposed provision specifically allowing an employee's acceptance of commemorative items of nominal value has been deleted due to the OGE's requirements. Employees may only accept unsolicited advertising or promotional material of nominal value pursuant to § 336.8(b)(2).

3. As the OGE required, and in conformance with its advisory opinions, the prohibition on receiving compensation for a speech in § 336.11(c) has been changed to pertain only to a speech, the subject matter of which relates specifically to matters involving the FDIC.

4. The addition of a prohibition against sexual harassment is beyond the scope of this regulation. The prohibition against gambling on FDIC property (§ 336.14(b)) has been broadened to cover all government property, as was required by the OGE.

5. Division of Liquidation employees will not be able to borrow from wholly owned subsidiaries of the bank resulting from a failed bank within the employee's region. The language changes in § 336.16(b)(3) have been made to cover loan production offices opened by banks that are not bank branches and to clarify that an assuming entity and its branches located outside of an employee's region are not prohibited creditors. In addition, the disqualification for an employee to act on matters pertaining to his or her creditor institution under § 336.16(d) is retained to ensure that employees avoid conflicts of interest and the appearance thereof.

6. Division of Bank Supervision employees referenced in § 336.16(a) will not be permitted to obtain credit cards from state nonmember banks located in their region. Although one commenter suggested that the affected employees could be disqualified from working on matters affecting such institutions, such a procedure would have a potentially severe impact on the FDIC's ability to examine banks. By curtailing the number of available staff in a region, possibly to very few, implementing the procedure could impede the Division of Bank Supervision's accomplishment of its mission.

7. In accordance with requirements of the OGE, the language of § 336.26 has been changed to require covered employees to report their resignation and prospective employment as soon as possible but in no event less than two weeks before resignation. As the OGE commented, "If prospective employment is reported as soon as possible, any necessary recusals can be more promptly implemented."

8. In accordance with requirements from the OGE, the provisions of § 336.29(a-e) on post-employment activities have been revised to track the language of the model regulation at 5 CFR 737.5(a), 737.7(a), 737.5(c), 737.9(a), and 737.11(a), which sections are now cross-referenced. The new language clarifies that the prohibition extends to representation before any U.S. or District of Columbia agency or court (rather than merely representation before the FDIC), as title 18 of the U.S. Code requires.

9. Other grammatical and clarification changes were made to the regulation. Two examples are: (a) The FDIC's Office of Research and Strategic Planning will soon be renamed the Office of Research and Statistics, which is reflected in the final rule, and (b) the shorthand summary of credit prohibitions in the Appendix now includes the fact that the exception for the assumption of a mortgage is for an employee's personal residence only.

Employees are encouraged to consult at any time with the Ethics Counselor, Ethics Program Manager, or Deputy Ethics Counselors regarding any questions they may have on this part.

Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The FDIC's Board of Directors bases its conclusion on the fact that the rule applies to all programs and activities conducted by the FDIC but does not reach the activities of the banks regulated and/or insured by the FDIC.

Paperwork Reduction Act Statement

The Paperwork Reduction Act (44 U.S.C. 501 *et seq.*) is inapplicable to the final rule as it applies only to U.S. government employees in the course of their normal employment.

List of Subjects in 12 CFR Part 336

Conflicts of interest, Credit, Disclosure requirements, Former

government employees, Government employees.

Accordingly, Part 336 is revised to read as follows:

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

Sec.

- 336.1 Purpose and scope.
- 336.2 Definitions.
- 336.3 Employee responsibility, counseling, and distribution of regulation.
- 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.
- 336.5 Sanctions and remedial actions.
- 336.6 Review of remedial actions.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

- 336.7 General rules.
- 336.8 Gifts, entertainment, favors, and loans.
- 336.9 Travel expenses.
- 336.10 Use of official information.
- 336.11 Lectures, speeches, and manuscripts.
- 336.12 Employment by FDIC of relatives.
- 336.13 Use of FDIC property.
- 336.14 Indebtedness, gambling, and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

- 336.15 General rules.
- 336.16 Extensions of credit.
- 336.17 Bank securities.
- 336.18 Purchase of liquidation assets.
- 336.19 Purchase of FDIC property.
- 336.20 Purchase of assets of insured banks.
- 336.21 Providing goods or services to the FDIC.
- 336.22 Outside employment and other activity.
- 336.23 Employment of family members by persons other than the FDIC.

Subpart D—Reports of Interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

- 336.24 Report of interest in bank securities.
- 336.25 Report of interest in FDIC decision.
- 336.26 Report of employment upon resignation.
- 336.27 Statement of employment and financial interests.
- 336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

- 336.29 Limitations on representation.
- 336.30 Consultation as to propriety of appearance before the FDIC.
- 336.31 Suspension of appearance privilege.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

- 336.32 Use of FDIC employment.

- Sec.
336.33 Use of inside information.
336.34 Coercion.
336.35 Gifts, entertainment, favors, and loans.
336.36 Miscellaneous statutory provisions.
336.37 Statements of employment and financial interests.

Appendix to Part 336—Matrix of Credit Prohibitions.

Authority: E.O. 11222, 3 CFR 1964-1965 Comp.; 5 CFR 735.104; 5 CFR 737.1(a); E.O. 12565.

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 336.1 Purpose and scope.

In order to assure the proper performance of FDIC business and to maintain public confidence in government, FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest. This part establishes the policies and procedures of the FDIC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth. This part further sets out the policies and procedures for employee reporting of financial interests and obligations.

§ 336.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any holding company of which a bank is a subsidiary and any other subsidiary of such holding company. Any other entity which would be defined as an affiliate of an insured state nonmember bank under 12 U.S.C. 221a, if such bank were a member bank, shall be deemed to be an affiliate of such insured state nonmember bank.

(b) "Appearance" means an individual's physical presence before the United States in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) "Appropriate director" means the director of the Washington division or office or the regional director or regional counsel for the division to which an employee is assigned.

(d) "Assessment auditor" means any individual employed as an auditor of insured banks for deposit insurance assessment purposes, whether assigned

to a field office or the Washington office, and includes Washington office personnel having oversight and review responsibility for the collection of assessments.

(e) "Assisted entity" means (a) any bank which has received financial assistance from the FDIC to prevent its failure, (2) any bank resulting from a merger or consolidation with any bank described in paragraph (e)(1) of this section, or (3) any parent bank holding company of a bank described in paragraph (e)(1) or (2) of this section; *Provided*, That an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such bank or bank holding company and the FDIC.

(f) "Assuming entity" means any bank or bank holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed bank for a period of one year following the closing of such failed bank.

(g) "Attorney" means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division. The term does not include outside attorneys engaged in the private practice of law and retained by the FDIC.

(h) "Chairman" means the Chairman of the Board of Directors of the FDIC.

(i) "Covered employee" means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to §§ 336.27(a) or 336.28.

(j) "Dependent child" means a son, daughter, stepson, or stepdaughter who either (1) is unmarried, under 21, and living in the employee's household, or (2) has received over half of his or her support from the employee in the preceding calendar year.

(k) "Employee" means any individual member of the Board of Directors, officer or employee, including a liquidation graded employee, of the FDIC, but does not include a special government employee, the Comptroller of the Currency, or any person employed by the Office of the Comptroller of the Currency.

(l) "Examiner" means any commissioned bank examiner and any employee assigned to the Division of Bank Supervision in a position of the 570 series.

(m) "Honorarium" means a payment, usually for services on which custom or propriety forbids a price to be set.

(n) "Insured bank subject to audit for deposit insurance assessment purposes" means any one of the 500 largest insured

banks with demand deposits in excess of \$100 million, which are routinely audited by the FDIC for assessment purposes.

(o) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(p) "Official responsibility" means the direct administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, or recommend official action or to express staff opinions in dealings with the public.

(q) "Person" means an individual, bank, corporation, company, association, partnership, firm, society, or any other organization or institution.

(r) "Reviewing official" means the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(s) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(t) "Senior employee" means any individual member of the Board of Directors of the FDIC and any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

(u) "Special government employee" means any employee serving the FDIC with or without compensation for up to 130 days during any 365-day period on a full-time or intermittent basis.

(v) "Subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 336.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new

employee and special government employee within 30 days of commencement of employment, and each such employee or special government employee shall complete and file the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The FDIC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the FDIC's Ethics Counselor.

(b) The Ethics Program Manager, Office of the Executive Secretary, shall act as the FDIC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 336.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review, pursuant to § 336.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take

effect immediately. Any order of remedial action reviewed and approved pursuant to § 336.6 shall take effect immediately upon receipt of notice of the determination of the Chairman or his or her designee.

§ 336.6 Review of remedial actions.

When remedial action is ordered pursuant to § 336.5, the affected employee or special government employee may request the Chairman to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The Chairman, or his or her designee, will promptly review the matter and will provide written notice of his or her determination to the employee, which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 336.7 General rules.

FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding the FDIC's efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making an FDIC decision outside official channels; or
- (f) Adversely affecting the public's confidence in the integrity of the FDIC.

§ 336.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

- (1) Has or seeks contractual or other business or financial relationships with the FDIC;
- (2) Is or may be regulated or examined by the FDIC; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 336.16, to the acceptance of loans from banks or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations (including those that have as members firms doing business with the FDIC), international organizations, or government entities where it has been determined that attendance is in the interest of the FDIC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor, consistent with guidelines established by the U.S. Office of Government Ethics.

(c) No examiner shall accept any gratuity from any insured state nonmember bank, from any insured bank examined by the examiner, or from any person connected therewith. (See 18 U.S.C. 213)

(d) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) or (c) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) or (c) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or

otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the FDIC. (See 18 U.S.C. 209)

(e) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351)

(f) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342)

§ 336.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the FDIC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the FDIC will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 336.8(b)(4) and (b)(5).

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the FDIC may, and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics Counselor), accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest. (See 5 CFR 410.702)

(e) When an employee is not on official duty and there is no payment or reimbursement by the FDIC for expenses of travel, lodging or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this

part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging, or subsistence provided by family members or personal friends.

§ 336.10 Use of official information.

(a) Except as permitted in § 336.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her FDIC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a, or Part 310 of the FDIC's regulations.

(c) An examiner may not disclose information from a bank examination report except as authorized by law. (See 18 U.S.C. 1906)

(d) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905)

§ 336.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before banking or public organizations on matters involving the FDIC unless the employee receives prior approval, and prior clearance of material to be published, by the appropriate director.

(b) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her FDIC employment unless the information is available to the general public or the appropriate director gives authorization for such use, upon the determination that the use of the information is in the public interest.

(c) Except as provided in § 336.8(b)(2), no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the FDIC or contains information that is not otherwise available to the general public.

(d) No employee may accept an honorarium of more than \$2,000 for any appearance, speech, or article in connection with non-FDIC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with FDIC-related matters. (See 2 U.S.C. 441i)

§ 336.12 Employment by FDIC of relatives.

(a) For the purpose of this section:

(1) A "relative" is any person related to an FDIC official as parent, step-parent, child, step-child, brother, sister, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the FDIC.

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An FDIC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the FDIC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever an employee becomes a supervisor of a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the FDIC which is outside the scope of the supervisor's authority.

§ 336.13 Use of FDIC property.

An employee shall not, directly or indirectly, use or allow the use of any kind of FDIC property, including, but not limited to, property which the FDIC

holds in its corporate capacity, leased property, or property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank, for other than officially approved activities. An employee has a positive duty to protect and conserve FDIC property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 336.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This does not require the FDIC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the FDIC or the government or while on duty for the FDIC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest, or other conduct prejudicial to the FDIC.

(d) *Miscellaneous.* Other provisions with which an employee should be familiar include:

- (1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96-303, 94 Stat. 855-856);
- (2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);
- (3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);
- (4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);
- (5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);
- (6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));
- (7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);
- (8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibitions against political activities in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607;

(14) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(15) Prohibition against the use of manipulatives or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b-5).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 336.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's FDIC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her FDIC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the FDIC in a matter in which the employee participates or has participated, personally and substantially, by

decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairman or the Director (Appointive),¹ receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

§ 336.16 Extensions of credit.

(a) An examiner, and any other covered employee of the Division of Bank Supervision at or above the grade 11 level (except those employees covered under paragraph (b)(1) of this section), may not, directly or indirectly, accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from an insured state nonmember bank, except, in the case of an obligation or extension of credit evidenced by a credit card, credit may be obtained from an insured state nonmember bank located outside the employee's region of official assignment.² Any such credit card must be issued under the same terms and conditions as are offered to the general public, the total line of credit from any one institution must not exceed \$10,000, and the employee must file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

¹ The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairman if he or she receives the prior written determination of the President (or the Director (Appointive) if he or she receives the prior written determination of the Chairman) that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

² An examiner and any other covered employee of the Division of Bank Supervision at or above the grade 11 level assigned to the Washington office may obtain credit extended through the use of a credit card from any insured state nonmember bank, subject to the restrictions of paragraph (a) of this section.

(b) Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed \$10,000—

(1) An individual member of the Board of Directors (except the Comptroller of the Currency), any assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), any assistant thereto, any director of a division or office, the holder of any position immediately subordinate thereto, and any covered employee of the Office of Consumer Affairs may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank.

(2) A regional counsel or attorney (Bank Supervision) assigned to a regional office may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank headquartered in the employee's region of official assignment.

(3) A regional director, deputy regional director, and any other covered employee of the Division of Liquidation assigned to a regional or consolidated office; a supervisory accountant or supervisory field accountant of the Division of Accounting and Corporate Services assigned to a regional or consolidated office; and a regional counsel or attorney (Bank Liquidation) assigned to a regional or consolidated office may not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity, for so long as such entity remains an assisted or assuming entity, located in the employee's region of official assignment which, for the purposes of this paragraph, shall be deemed to include—

(i) The bank resulting from a failed bank and any of its wholly owned subsidiaries within the employee's region of official assignment if the assuming entity is a bank holding company;

(ii) The assuming entity, all of its branches, and all of the wholly owned subsidiaries of the failed bank within the employee's region of official assignment if the assuming entity is a bank located in the employee's region of official assignment; and

(iii) The wholly owned subsidiaries of the failed bank, which subsidiaries are located in the employee's region of official assignment if the assuming entity is a bank located outside the employee's region of official assignment.

(4) An assessment auditor may not, directly or indirectly, accept or become

obligated on any extension of credit from an insured bank subject to audit for deposit insurance assessment purposes except that, with the prior written permission of the appropriate director, an assessment auditor may accept or become obligated on an extension of credit from one such bank and shall be disqualified from participating in any audit of or otherwise taking any action on behalf of the FDIC with regard to such bank.

(5) An individual member of the Board of Directors (except the Comptroller of the Currency), and any other covered employee assigned to the Washington office, who has participated personally and substantially on behalf of the FDIC in any matter involving an assisted or assuming entity, or a covered employee of the Division of Liquidation assigned to the Washington office whose official duties bring him or her into contact with any matter involving an assisted or assuming entity, may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity.

(c) The Director of the Division of Bank Supervision, the holder of any position immediately subordinate thereto, an examiner, or any other covered employee of the Division of Bank Supervision is disqualified from participating in any examination, audit visitation, or investigation of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee. An assessment auditor is disqualified from participating in any audit of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from such bank, financial institution, or other person does not exceed \$10,000. Every other covered employee is disqualified from taking any action on behalf of the FDIC with regard to any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of \$10,000. The appropriate director, in consultation with the Ethics Counselor, may also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another

division or location or action affecting the status of the creditor³ results in an extension of credit prohibited by paragraphs (a) and (b) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(1) An employee, other than an employee described in paragraph (b)(1) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may request permission to renegotiate the loan. An employee described in paragraph (b)(1) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made, in writing, to the appropriate director and Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, to the Ethics Counselor, stating—

- (i) The purpose of the renegotiation;
- (ii) The terms and conditions of the original loan;
- (iii) The terms and conditions now available to the general public;
- (iv) The terms and conditions now offered the employee;
- (v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and
- (vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, without the prior review and concurrence by the Ethics Counselor.

(e) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances—

³ Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the creditor.

(f)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless—

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has, or in the case of student loans will have, the income, and ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an extension of credit to an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 336.17 Bank securities.

(a) While employed by the FDIC an employee may not purchase, own, or control, directly or indirectly, any securities of an insured bank or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured bank or affiliate thereof whenever—

(i) Ownership or control was acquired prior to commencement of FDIC

employment, through a change in material status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure, on the prescribed form to the Ethics Counselor, pursuant to § 336.24, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the bank or affiliate; *Provided*, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the FDIC.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her FDIC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured bank or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if (1) the assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities and (2) the employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust. Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the FDIC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless—

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 336.18 Purchase of liquidation assets.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank, regardless of how the property is sold.

(b) An employee who is involved in the disposition of liquidation assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such liquidation assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the FDIC confidential information regarding the sale or disposition of liquidation assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in Division of Liquidation guidelines applicable to such sale or disposition.

§ 336.19 Purchase of FDIC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its corporate capacity unless—

(1) The property has been declared excess property by, and is sold in accordance with standards and procedures prescribed by, the Director of the Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or

indirectly purchase any property from the FDIC if—

(1) The employee is employed in the Facilities Management and Operations Section of the Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the FDIC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 336.20 Purchase of assets of insured banks.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured bank unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any bank in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 336.21 Providing goods or services to the FDIC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the FDIC either in its corporate capacity or in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank unless the Director of the Division of Accounting and Corporate Services or the Director of the Division of Liquidation determines, in accordance with the provisions of § 336.22(d) and (e) and standards and procedures approved by the Board of Directors, that it is in the

best interest of the FDIC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the FDIC.

§ 336.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her FDIC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the FDIC. Employment or activity which is not compatible with the employee's duties and responsibilities to the FDIC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the FDIC. Such employment or activity may involve—

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any financial institution, including a bank, a savings and loan association, or a credit union, except the FDIC Employees' Federal Credit Union; or

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services. Any employee who engages in, or intends to engage in, outside employment or activity has the responsibility to consult with the Ethics Counselor as to whether such employment or activity is compatible with the employee's FDIC duties and responsibilities.

(b) An examiner shall not perform any service for compensation for any bank, for any officer, director, or employee thereof, or for any person connected therewith. (See 18 U.S.C. 1909)

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the FDIC. (See 18 U.S.C. 209)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of (1) charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 336.16 or 18 U.S.C. 203 or 205 or (2) if not prohibited by law, national or state political parties.

§ 336.23 Employment of family members by persons other than the FDIC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by—

- (1) An insured bank or its affiliate;
- (2) A firm or business with which, to the employee's knowledge, the FDIC has a contractual or other business or financial relationship; or
- (3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the FDIC;

within 30 days of the commencement of employment of the family member.

(b) Generally, a covered employee will not be assigned to any examination, investigation, application, or to other matters involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the FDIC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making

character would not require disqualification.

Subpart D—Reports of interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

§ 336.24 Report of interest in bank securities.

All employees must report, on the prescribed form, direct or indirect ownership of securities of insured banks within 30 days of commencement of employment, within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 336.17, or, if the interest was previously acquired, within 30 days of the entity's becoming an insured bank.

§ 336.25 Report of interest in FDIC decision.

Except for interests reported in accordance with §§ 336.17 and 336.24, an employee with a financial interest (other than a deposit or indebtedness) in a bank or other entity that may be affected by his or her participation in an FDIC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment, within 30 days of acquiring the interest, if acquired subsequent to employment, or, if the interest was previously acquired, within 30 days of the bank's or other entity's becoming subject to an FDIC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.26 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

§ 336.27 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 336.28, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual

Board members (except persons employed by the Office of the Comptroller of the Currency);

(2) Holder(s) of the position(s) immediately subordinate to the director of a division or office;

(3) Branch or comparable office heads;

(4) Division of Bank Supervision employees at or above the grade 5 level in job series 570, 1160, 301 and 341;

(5) Division of Liquidation employees at or above the grade 5 level in job series 1160, 301 and 341;

(6) Office of Research and Statistics employees serving as financial economists in job series 110.

(7) Assessment auditors at or above the grade 5 level;

(8) Employees of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(9) Persons employed by the FDIC as attorneys;

(10) Corporate auditors at or above the grade 5 level;

(11) Consumer Affairs Specialists at or above the grade 11 level;

(12) Voting members and designees appointed to any FDIC standing committee;

(13) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(14) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other FDIC regulation; *Provided*, that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any bank or other enterprise.

(b) *Submission of statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year, with

instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing official as follows—

(i) Assistants to assistants or deputies to the Board of Directors or to individual Board members, holder (s) of the position(s) immediately subordinate to a director of a division or office, voting members and designees appointed to any FDIC standing committee, and branch or comparable office heads, to the Alternate Ethics Counselor, Office of the Executive Secretary;

(ii) Division of Bank Supervision covered employees assigned to a regional office, to the designated Deputy Ethics Counselor for the region to which assigned;

(iii) Division of Bank Supervision covered employees assigned to the Washington Office or detailed to another division, to the designated Deputy Ethics Counselor for the Division of Bank Supervision;

(iv) Division of Liquidation covered employees assigned to regional or consolidated offices, to the designated Deputy Ethics Counselor for the region or consolidated office to which assigned;

(v) Division of Liquidation covered employees assigned to the Washington Office of detailed to another division, to the designated Deputy Ethics Counselor for the Division of Liquidation;

(vi) Division of Accounting and Corporate Services covered employees assigned to the Washington Office, a regional office, or consolidated office, to the designated Deputy Ethics Counselor for the branch to which assigned;

(vii) Legal Division covered employees assigned to a regional or consolidated office, to the appropriate regional counsel (Supervision or Liquidation) or, if applicable, to the designated Deputy Ethics Counselor for the consolidated office to which assigned;

(viii) Legal Division covered employees assigned to the Washington Office, to the appropriate Deputy Ethics Counselor;

(ix) Deputy Ethics Counselors and Alternate Ethics Counselor, to the Ethics Counselor, Office of the Executive Secretary; and

(x) All covered employees of the Office of Research and Statistics, the Office of Consumer Affairs, the Office of Corporate Audits and Internal Investigations, and all other covered employees required to file, to the Alternate Ethics Counselor, Office of the Executive Secretary.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless—

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed,

and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairman or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the FDIC—

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics Counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairman for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency), employees at or above the FDIC's Executive Level I, and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file—

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734; and

(b) Confidential Reports of Indebtedness reporting all indebtedness

to insured banks and any affiliates thereof, not otherwise reportable in accordance with the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees *

§ 336.29 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof (1) to the United States, (2) in connection with any particular government matter involving a specific party, and (3) in which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise. (See 18 U.S.C. 207(a) and 5 CFR 737.5(a))

(b) No former employee or special government employee, within two years after termination of employment with the FDIC, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof (1) to the United States, (2) in connection with any particular government matter involving a specific party, (3) if such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility. (See 18 U.S.C. 207(b)(i) and 5 CFR 737.7(a))

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters

* While the FDIC has not adopted rules with regard to the disclosure of unpublished information by former FDIC employees, it advises such persons not to disclose unpublished information of the FDIC obtained in the course of their work. Questions in this regard may be addressed to the FDIC's Ethics Counselor.

of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a specialized effect on a certain party or group of parties. (See 5 CFR 737.5(c)).

(d) No former senior employee, within two years after termination of employment with the FDIC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular government matter involving a specific party, (3) in which matter he or she participated personally and substantially while an employee. (See 18 U.S.C. 207(b)(ii) and 5 CFR 737.9(a))

(e) For a period of one year after termination of employment with the FDIC, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to (1) the FDIC or any of its officers or employees, (2) in connection with any particular government matter, whether or not involving a specific party, which is pending before the FDIC, or in which the FDIC has a direct and substantial interest. (See 18 U.S.C. 207(c) and 5 CFR 737.11(a))

§ 336.30 Consultation as to propriety of appearance before the FDIC.

Any former employee who wishes to appear before the FDIC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the FDIC, may consult the Ethics Counselor as to the propriety of such appearance.

§ 336.31 Suspension of appearance privilege.

Subject to the provisions of 18 U.S.C. 207(j), if any former employee or special government employee knowingly fails to comply with the provisions of this subpart, the Chairman may prohibit such person from making an appearance before or an oral or written communication with the FDIC for such period of time as he or she determines, not to exceed five years, or may impose such other sanctions as he or she deems just and proper.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 336.32 Use of FDIC employment.

A special government employee shall not use his or her FDIC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.33 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her FDIC employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under FDIC authority which has not become part of the body of public information.

(b) The provisions of § 336.11 (a) through (d) with regard to employees shall be applicable to special government employees.

§ 336.34 Coercion.

A special government employee shall not use his or her FDIC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.35 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the FDIC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 336.8(b) with regard to employees shall be applicable to special government employees.

§ 336.36 Miscellaneous statutory provisions.

Each special government employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as a special government employee of the FDIC and

of the Government. In addition to the statutes cited in the body of the regulations in this part, the attention of each special government employee is directed to the statutory provisions listed in § 336.14(d).

§ 336.37 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports—

- (1) All other employment; and
- (2) The financial interests of the special government employee which the FDIC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the FDIC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns, and individuals paid out of "Imprest Funds" to assist in bank liquidations.

(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later than the time of employment of the special government employee. Each special government employee shall keep his or her statement current throughout his or her employment with the FDIC by the submission of amended or annual statements as required.

(e) The provisions of § 336.27 (c) through (h) shall apply to statements filed under this section.

Appendix to Part 336—Matrix of Credit Prohibitions

Covered employees	Credit prohibitions	Exceptions to credit prohibitions
Members of the Board of Directors (except the Comptroller of the Currency), an assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), and any assistant thereto, directors of divisions or offices, holder(s) of position(s) immediately subordinate thereto, except as provided below.	Insured state nonmember banks.....	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior review and concurrence by the Ethics Counselor is obtained.
The Director of the Division of Bank Supervision, holder(s) of position(s) immediately subordinate thereto, examiners, or any other covered employee of DBS at or above grade 11 assigned to the Washington Office or any region..	Insured state nonmember banks.....	(1) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained. (2) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000, the issuing bank is located outside the employee's official region of assignment, and notice is given on a prescribed form.
Division of Liquidation employees in job series 301, 1160, or 341 at or above grade 5 assigned to a regional or consolidated office; Closed bank attorneys assigned to a regional or consolidated office; and Supervisory accountants and supervisory field accountants assigned to a regional or consolidated office..	New extensions of credit from an assisted or assuming entity for so long as it remains an assisted or assuming entity. Prohibition extends to all branches within employee's region of assignment..	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.
Open bank attorneys assigned to a regional office	Insured state nonmember banks headquartered in region of assignment..	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.
Assessment auditors	Insured banks subject to audit for deposit insurance assessment purposes..	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Credit extended by one particular insured bank subject to audit when prior written approval is received. (3) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.
Consumer Affairs Specialists at or above grade 11	Insured state nonmember banks.....	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage on personal residence or renegotiation of pre-existing debt when prior written approval is obtained.

General: All covered employees are disqualified from matters affecting any provider of credit unless amount of credit extended to employee is \$10,000 or less. Covered employees of the Division of Bank Supervision are disqualified regardless of the amount of credit extended.

All covered employees who participated personally and substantially in any matter involving an assisted or assuming entity may not accept any extension of credit from that institution.

Note.—See section 336.16(b)(5) and (d) for prohibitions applicable to all covered employees generally.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 88-27423 Filed 11-28-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 574

Acquisition of Control of Insured Institutions Technical Amendments

Date: October 26, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of

the Federal Savings and Loan Insurance Corporation ("FSLIC") is adopting technical amendments to the provisions of the Acquisition of Control Regulations, 12 CFR Part 574, regarding the criteria applicable for determining whether a holding company application is eligible to be processed under delegated authority. The amendment deletes provisions from the delegations of authority subsection of the regulation which have the effect of preventing action at a delegated level on holding company applications where the acquiring company is not willing to agree to a specified type of regulatory capital maintenance undertaking with respect to the subsidiary insured institution. The revised delegation standard is intended to conform to the Statement of Policy recently issued by the Board on the regulatory capital maintenance obligations of acquirors of insured institutions.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT:

John Robinson, Director, Policy Analysis, Office of Regulatory Activities, (202) 778-2509, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20552; Stuart Feldstein, Attorney, (202) 377-6476, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board's regulations governing acquisitions of control of insured institutions, 12 CFR Part 574, presently provide that holding company applications are not eligible to be acted upon pursuant to delegated authority by the Principal Supervisory Agents ("PSAs") at the Federal Home Loan

Banks or by the Board's Washington, DC staff ("Washington staff") where the applicant company is unwilling to agree in writing that:

"It will ensure that its subsidiary insured institution shall have, at the end of each calendar quarter, regulatory capital at least equal to the amount that may be required pursuant to § 563.13 of this chapter, and that where necessary, the company will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with such undertaking: *Provided*, that where a company proposes to acquire less than 50 percent of the voting stock of an insured institution, such company agrees to the foregoing regulatory capital maintenance undertaking on a *pro rata* basis according to its percentage ownership of the insured institution's voting stock."

12 CFR 574.8(a)(iii)(A).

The Board has recently issued a "Policy Statement on Regulatory Capital Maintenance Obligations of Insured Institution Acquirors," ("Statement of Policy"), 53 FR 31761 (August 19, 1988) setting forth the Board's views on the extent to which savings and loan holding companies and other controlling persons should be required to contribute financial assistance to their subsidiary insured institutions. As a result, the delegation standard described above, which requires a holding company applicant to agree to a specified type of open-ended net worth maintenance obligation, is no longer reflective of the Board's policies in this area. Accordingly, the current delegation standard pertaining to the regulatory capital maintenance obligations of holding companies is being deleted so that the delegation provisions of Part 574 will not be inconsistent with the policies outlined in the Statement of Policy. Holding company applications and change in control notices presenting approaches inconsistent with the Board's policy as set forth in the Statement of Policy, or presenting significant issues of law or policy as identified in guidelines to be issued by the Office of Regulatory Activities, will be considered to present a significant issue of law or policy and thus will not be eligible for action by the PSAs or the Washington staff.

List of subjects in 12 CFR Part 574

Administrative practice and procedure, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 574, Subchapter D, Chapter V, Title 12 Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730), and sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.8(a)(1)(iii) to remove paragraph (A) and designate paragraph (B) as paragraph (A).

3. Amend § 574.8 by revising paragraph (b)(1)(ii) to read as follows:

§ 574.8 Delegations of authority.

(b) * * *

(1) * * *

(ii) Which does not involve dividend conditions that fail to conform to paragraph (a)(1)(iii) of this section.

* * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-27330 Filed 11-28-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-162-AD; Amdt. 39-6083]

Airworthiness Directives: McDonnell Douglas Model DC-9-81, -82, -83, and -87 Series Airplanes Not Equipped With Autobrakes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas DC-9-81, -82, -83, and -87 series airplanes not equipped with autobrakes, which requires inspection and replacement, if necessary, of the spoiler control circuit breaker to assure that the correct circuit breaker is installed. This amendment is prompted by reports of incorrect circuit breakers found on in-service airplanes. This condition, if not corrected, could result in loss of inboard ground spoilers and decreased braking performance, which could cause the airplane to depart the runway on landing or rejected takeoff.

DATES: Effective December 16, 1988.

ADDRESSES: The applicable service information may be obtained from

McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert M. Stacho, Aerospace Engineer, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Three instances of an "open" spoiler control circuit breaker have been reported by operators of McDonnell Douglas Model DC-9-80 series airplanes. Investigation has revealed that these airplanes had a 2-amp circuit breaker installed, which is inadequate for system current load. A 5-amp circuit breaker is required. An "open" circuit breaker will prevent hydraulic pressure from being applied to the inboard ground spoilers, which will prevent the ground spoilers from deploying. Further, with an "open" circuit breaker, there is no indication to the flight crew that the inboard ground spoilers are inoperative. This condition, if not corrected could result in inoperative inboard ground spoilers and decreased braking performance, which could cause the airplane to depart the runway on landing or rejected takeoff.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-298, dated October 5, 1988, which described procedures for inspection and replacement, if necessary, of the spoiler control circuit breaker.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the spoiler control circuit breaker to assure that the required 5-amp circuit breaker is installed, and replacement, if necessary, in accordance with the service bulletin previously mentioned. Operators are required to submit a report of their inspection findings to the FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions

of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series airplanes not equipped with autobrakes, as listed in McDonnell Douglas Alert Service Bulletin A27-298, dated October 5, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of inboard ground spoilers and the resulting decreased braking performance during landing or rejected takeoff, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect the spoiler control circuit breaker located on the lower electrical power center circuit breaker panel, Row P30 or P33,

in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27-298, dated October 5, 1988.

1. If a 2-amp circuit breaker is installed, prior to further flight, replace it with a 5-amp circuit breaker in accordance with the above McDonnell Douglas Alert Service Bulletin.

2. If a 5-amp circuit breaker is installed, no further action is required.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM-181L, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective December 16, 1988.

Issued in Seattle, Washington, on November 17, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate
Aircraft Certification Service

[FR Doc. 88-27443 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-129-AD; Amdt. 39-6084]

Airworthiness Directives: Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain Fokker Model F-28 series airplanes, which requires a modification of the emergency lighting system. This amendment is prompted by reports that certain elements of the emergency lighting system may not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

EFFECTIVE DATE: January 9, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include an airworthiness directive, applicable to certain Fokker Model F-28 series airplanes, which requires modification of the emergency lighting system, was published in the Federal Register on August 25, 1988 (53 FR 32403).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, commenting on behalf of its member operators, requested that the FAA contact the manufacturer to determine whether the proposed rule is needed. The FAA does not concur. As stated in the preamble to the original Notice, Supplemental Notice, and this action, the FAA has determined that an unsafe condition exists and AD action must be taken to address it. The commenter has submitted no information to warrant a reconsideration of that determination.

ATA also requested that the compliance period be extended from 12 months to 18 months to allow sufficient time for release of service instructions, delivery of parts, and retrofit of the affected airplanes. The FAA does not concur. In developing this proposal, the compliance time was established after careful consideration of the nature of

the problem, maintenance schedules, and availability of necessary parts. The commenter submitted no information that would indicate that it could not comply with the required actions within the 12-month period.

The FAA has determined that the final rule must be revised to limit the applicability to the Fokker F-28 Model Mark 1000, 2000, 3000, and 4000 series airplanes, since these are the only airplanes affected. This change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change noted above.

It is estimated that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 90 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$183,600.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$3,600). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category. Compliance is required within 12 months after the effective date of this AD, unless previously accomplished:

To ensure the proper operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Verify that a three position emergency lighting switch (i.e., OFF, ON, and ARMED) is installed in the cockpit. If such a switch is not installed in the cockpit, install one in a manner approved by the Manager, Standardization Branch ANM-113, FAA, Northwest Mountain Region.

Note: Operators may wish to refer to Fokker Service Bulletin F28/33-26, dated October 12, 1983, in determining the means to be used to install a three position switch.

B. Verify that the emergency lighting system illuminates upon loss of normal electrical power when the three position cockpit mounted switch is placed in the armed position.

Note: (1) Normal electrical power is considered to be the F-28 AC generator power.

(2) For the purpose of this requirement, the emergency lighting system is considered to consist of both the emergency lights and the evacuation lights; however, all affected operators should be aware that for operations under FAR Part 121, an airplane's emergency lighting system also includes the floor emergency escape path lighting. Any modification to the emergency lighting system should ensure the proper operation of the floor emergency escape path lighting.

C. Accomplish one of the following:

1. Modify the emergency lighting system, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, so that upon loss of normal electrical power, the emergency lighting system is powered by its own dedicated battery packs; or

2. Measure the minimum airplane battery voltage necessary to provide the required emergency lighting illumination levels. Modify the emergency lighting control circuit, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, to switch from the airplane batteries to the emergency lighting system battery packs prior to dropping below the above determined minimum airplane battery voltage.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 9, 1989.

Issued in Seattle, Washington, on November 17, 1988.

Leroy A. Keith,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 88-27442 Filed 11-28-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-34; Amdt. 39-6079]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, and 205A-1 Helicopters; California Department of Forestry Model UH-1F Helicopters; Garlick Helicopters, Hawkins and Powers Aviation, Inc., International Helicopters, Inc., Pilot Personnel International, Inc., and Southern Aero Corporation Model UH-1B Helicopters; Smith Helicopter and West Coast Fabrications Model UH-1E Helicopters; and Hercules and Oregon Helicopters Model UH-1L, TH-1L, and UH-1E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the retirement life of the tail rotor (T/R) grip assembly from 500 to 300 hours' time in service on BHTI Model 204B, 205A, and 205A-1 helicopters, and certain BHTI manufactured Model UH-1B, UH-1E, UH-1F, UH-1L, and TH-1L helicopters. The AD is needed to preclude possible failure of the tail rotor hub assembly which could result in loss of the helicopter.

DATES: Effective date: December 13, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESS: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

A copy of the service bulletin is contained in the Rules Docket located in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. T. K. Henry, Helicopter Certification Branch, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193-0170; telephone number (817) 624-5168.

SUPPLEMENTARY INFORMATION: The FAA was informed by U.S. Army Aviation System Command Message 012030Z, May 85, that the Army had ordered the reduction in service life of certain T/R grip assemblies on Military UH-1 series helicopters from 500 to 300 hours. The BHTI Part Number (P/N) 204-011-728 grip assemblies have experienced corrosion pitting in the thread areas as a result of moisture in the grip cavities leading to eventual cracking and ultimate failure of the grip assemblies. Cracking has occurred in eight grip assemblies on UH-1 series helicopters with four grip assemblies having less than 400 hours' time in service. The P/N 204-011-728-1, -13, and -19 grip assemblies are also used on civilian Model 204B, 205A, and 205A-1 series helicopters.

After further review, the manufacturer issued Bell Alert Service Bulletin No. 204-88-17, dated January 29, 1988, which reduces the retirement life of the Model 204B T/R grip assembly from 500 to 300 hours' time in service. The FAA has determined that this reduction in retirement life of the Model 204B T/R grip assembly is necessary to assure the continued airworthiness of this aircraft. Failure of the T/R grip assembly would result in loss of the tail rotor blade and subsequent loss of the helicopter.

Since this condition is likely to develop on other helicopters of the same type design, an airworthiness directive is being issued which reduces the retirement life of the T/R grip assembly Part Number (P/N) 204-011-728 (all dash numbers) from 500 to 300 hours' time in service on Bell Helicopter Textron, Inc., Model 204B, 205A, and 205A-1 helicopters; Garlick Helicopters, Hawkins and Powers Aviation, Inc., International Helicopters, Inc., Pilot Personnel International, Inc., and

Southern Aero Corporation Model UH-1B helicopters; Smith Helicopters and West Coast Fabrications Model UH-1E helicopters; and Hercules and Oregon Helicopters Model UH-1L, TH-1L, and UH-1E helicopters. The retirement life of the T/R grip assembly P/N 204-011-728-19 is reduced from 600 to 300 hours' time in service on California Department of Forestry Model UH-1F helicopters.

A new replacement T/R grip assembly (P/N 205-011-711-101) having a 2,500 hour service life is available.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Aviation Administration amends § 39.13 or Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI); California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation; Oregon Helicopters; West Coast Fabrications; and Hercules: Applies to Model 204B, 205A, and 205A-1 helicopters certificated in any category and Model UH-1B, UH-1E, UH-1F, UH-1L, and TH-1L helicopters certificated in the restricted category that have tail rotor grip assembly P/N 204-011-728-1, -13, or -19 installed.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor (T/R) grip assembly, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD, remove the T/R grip assembly, P/N 204-011-728-1, -13, or -19 with 250 or more hours' time in service and replace with a serviceable part.

(b) For those T/R grip assemblies, P/N 204-011-728-1, -13, or -19, with less than 250 hours' time in service on the effective date of this AD, a retirement life of 300 hours is established.

(c) Any alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

This amendment becomes effective December 13, 1988.

Issued in Fort Worth, Texas, on November 15, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88-27441 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25734; Amdt. No. 347]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR

altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT:

Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create

the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on November 10, 1988.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 347 EFFECTIVE DATE, DECEMBER 15, 1988

FROM	TO	MEA	FROM	TO	MEA
§95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART			§95.6068 VOR FEDERAL AIRWAY 68 IS AMENDED BY ADDING		
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2700	MONTROSE, CO VOR/DME *14500 - MRA	*PLACR, CO FIX	12000
§95.6009 VOR FEDERAL AIRWAY 9 IS AMENDED TO READ IN PART			PLACR, CO FIX	DOVE CREEK, CO VORTAC	14500
GREEN BAY, WI VORTAC	IRON MOUNTAIN, MI VORTAC	3300	DOVE CREEK, CO VORTAC	CORTEZ, CO VOR/DME	9800
IRON MOUNTAIN, MI VORTAC	HERMY, MI FIX	6000	CORTEZ, CO VOR/DME	PLATA, NM FIX	10600
HERMY, MI FIX	HOUGHTON, MI VORTAC	3800	PLATA, NM FIX	FARMINGTON, NM VORTAC	10000
§95.6045 VOR FEDERAL AIRWAY 45 IS AMENDED TO READ IN PART			§95.6074 VOR FEDERAL AIRWAY 74 IS AMENDED TO READ IN PART		
GREENSBORO, NC VORTAC	PROVE, NC FIX	3000	DODGE CITY, KS VORTAC *4000 - MRA	*SAFER, KS FIX	4300
§95.6051 VOR FEDERAL AIRWAY 51 IS AMENDED TO READ IN PART			TULSA, OK VORTAC	OWETA, OK FIX	3000
BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2700	OWETA, OK FIX	MALTS, OK FIX	*2800
§95.6054 VOR FEDERAL AIRWAY 54 IS AMENDED TO READ IN PART			*1900 - MOCA	CHARR, AR FIX	*2500
SPARTANBURG, SC VORTAC	CHARLOTTE, NC VOR/DME	*3200	FORT SMITH, AR VORTAC *1800 - MOCA	*MAGGA, AR FIX	**3000
*2700 - MOCA			CHARR, AR FIX	*3600 - MCA MAGGA FIX, E BND	
§95.6056 VOR FEDERAL AIRWAY 56 IS AMENDED TO READ IN PART			*2200 - MOCA	LITTLE ROCK, AR VORTAC	3500
WALLO, NC FIX	KROVE, NC FIX	*3000	MAUME, AR FIX	PINE BLUFF, AR VORTAC	*2500
*2400 - MOCA			LITTLE ROCK, AR VORTAC *1800 - MOCA		
KROVE, NC FIX	NEW BERN, NC VOR/DME	2400	§95.6078 VOR FEDERAL AIRWAY 78 IS AMENDED TO READ IN PART		
§95.6064 VOR FEDERAL AIRWAY 64 IS AMENDED TO READ IN PART			RHINELANDER, WI VORTAC	IRON MOUNTAIN, MI VORTAC	6000
IDEAL, CA FIX	BALDI, CA FIX	10500	IRON MOUNTAIN, MI VORTAC	GERLA, MI FIX	6000
BALDI, CA FIX	CORLA, CA FIX	8000	GERLA, MI FIX	ESCANABA, MI VORTAC	3000
	W BND	9700	§95.6097 VOR FEDERAL AIRWAY 97 IS AMENDED TO READ IN PART		
	E BND	8000	BOILER, IN VORTAC	CHICAGO HEIGHTS, IL VORTAC	2700
CORLA, CA FIX	*THERMAL, CA VORTAC	8400	§95.6136 VOR FEDERAL AIRWAY 136 IS AMENDED TO READ IN PART		
	W BND	6000	FAYETTEVILLE, NC VOR/ DME	GRAND STRAND, SC VORTAC	*3000
*7700 - MCA THERMAL VORTAC, W BND	E BND	6000	*2100 - MOCA		
§95.6213 VOR FEDERAL AIRWAY 213 IS AMENDED TO READ IN PART			WALLO, NC FIX	ESTER, NC FIX	*5000
			*1600 - MOCA		

FROM TO MEA
§95.6246 VOR FEDERAL AIRWAY 246
 IS AMENDED TO READ IN PART

WAIKON, IA VORTAC NODINE, MN VORTAC 3000

§95.6310 VOR FEDERAL AIRWAY 310
 IS AMENDED TO READ IN PART

BURCH, NC FIX GREENSBORO, NC VORTAC *3300
 *2400 - MOCA

§95.6341 VOR FEDERAL AIRWAY 341
 IS AMENDED TO READ IN PART

IRON MOUNTAIN, MI VORTAC MARQUETTE, MI VOR/DME 6000

§95.6392 VOR FEDERAL AIRWAY 392
 IS AMENDED TO READ IN PART

ROZZY, CA FIX HAGAN, CA FIX 4000
 HAGAN, CA FIX *AUDIO, CA FIX **6000
 *9000 - MCA AUDIO FIX, NE BND
 **4500 - MOCA
 AUDIO, CA FIX CONYO, CA FIX 10000
 N BND 8000
 S BND 11000
 CONYO, CA FIX SIGNA, CA FIX 11000

§95.6430 VOR FEDERAL AIRWAY 430
 IS AMENDED TO READ IN PART

IRONWOOD, MI VORTAC DINER, MI FIX 3700
 DINER, MI FIX IRON MOUNTAIN, MI 6000
 VORTAC
 IRON MOUNTAIN, MI GERLA, MI FIX 6000
 VORTAC
 GERLA, MI FIX ESCANABA, MI VORTAC 3000

FROM TO MEA
§95.6441 VOR FEDERAL AIRWAY 441
 IS AMENDED BY ADDING

OCALA, FL VORTAC GAINESVILLE, FL VORTAC 2000
 GAINESVILLE, FL VORTAC MONIA, FL FIX *4000
 *2000 - MOCA MAA-11000
 MONIA, FL FIX BRUNSWICK, GA VORTAC *3000
 *1500 - MOCA MAA-11000
 BRUNSWICK, GA VORTAC *STARY, GA FIX **3000
 *5000 - MRA
 **1500 - MOCA
 STARY, GA FIX *CATHY, GA FIX **3000
 *5000 - MRA
 **1100 - MOCA
 CATHY, GA FIX *KELER, GA FIX **3000
 *5500 - MRA
 **1500 - MOCA
 KELER, GA FIX SAVANNAH, GA VORTAC *3000
 *1500 - MOCA

§95.6494 VOR FEDERAL AIRWAY 494
 IS AMENDED TO READ IN PART

ROZZY, CA FIX HAGAN, CA FIX 4000
 HAGAN, CA FIX *AUDIO, CA FIX **6000
 *9000 - MCA AUDIO FIX, NE BND
 **4500 - MOCA

§95.6591 VOR FEDERAL AIRWAY 591
 IS ADDED TO READ

GRAND JUNCTION, CO VORTAC TRACI, CO FIX
 E BND 11000
 W BND 9000
 PACES, CO FIX *11000
 *10100 - MOCA
 PACES, CO FIX GLENO, CO FIX 13000
 GLENO, CO FIX SNOW, CO VOR/DME 14000
 SNOW, CO VOR/DME KREMMLING, CO VORTAC 14500

FROM TO MEA MAA
§95.7217 JET ROUTE NO. 217

IS AMENDED TO DELETE

GRACE, PA FIX CLARION, PA VORTAC 18000 38000
 CLARION, PA VORTAC KEATING, PA VORTAC 18000 45000

[FR Doc. 88-27439 Filed 11-28-88; 8:45 am]
 BILLING CODE 4910-13-C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule, removal of obsolete regulation.

SUMMARY: NASA is amending 14 CFR Part 1214 by removing Subpart 1214.16, "Nonscientific Payloads," since it has served its purpose and is no longer in keeping with current policy.

EFFECTIVE DATE: November 29, 1988.

ADDRESS: Associate Administrator for External Relations, Code X, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: H. Hollister Cantus, 202 453-8310.

List of Subjects in 14 CFR Subpart 1214.16

Nonscientific payloads.

PART 1214—[AMENDED]

Subpart 1214.16—[Removed and Reserved]

14 CFR Part 1214, Subpart 1214.16 (consisting of §§ 1214.1600 through 1214.1606) is hereby removed and reserved.

James C. Fletcher,
Administrator.

[FR Doc. 88-27419 Filed 11-28-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM88-27-001; Order No. 504-A]

Procedure for Filing Petitions for Review With the Federal Energy Regulatory Commission; Order Denying Rehearing

Issued November 21, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying rehearing of Order No. 504 (53 FR 37545 (Sept. 27, 1988)) a final rule providing

that persons instituting proceedings in a United States Court of Appeals for review of a Commission order, decision or rulemaking must file a copy of the petition for review with the Secretary. The Commission issued Order No. 504 in response to a congressional mandate in Pub. L. No. 100-236. The order denying rehearing notes that the Commission's regulations comply with this act and, therefore, denies the petition for rehearing filed in this docket.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this order in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Order Denying Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 504, a final rule providing that persons instituting proceedings in a United States Court of Appeals for review of a Commission order, decision or rulemaking must file a copy of the petition for review with the Secretary.

The Commission issued Order No.

504¹ on September 21, 1988, in response to a congressional mandate in Pub. L. No. 100-236 (Act).² The Act provides that, when petitions for judicial review of a federal agency order have been filed in more than one circuit court within ten days of the issuance of the order, a special panel will determine the circuit court initially responsible for the petitions. The Act requires each federal agency to designate the officer who will receive the petitions for review.

The Commission amended its regulations to require persons filing petitions for review of any Commission order, decision or rulemaking in a United States Court of Appeals to file a copy of the petition (stamped by the court with the date of filing) with the Commission's Secretary.³ Order No. 504 provides that if, within ten days after issuance of the Commission order, the Office of the Secretary has physically received court-stamped copies of petitions for review of the same order filed in two or more U.S. Courts of Appeals, the Commission will forward those petitions to the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a).

On October 21, 1988, Affiliated Gas Producers (AGP) filed a request for rehearing of Order No. 504. AGP argues that the Commission's filing requirement is unduly burdensome. AGP argues that the Commission's filing requirement could, in effect, operate to shorten the 10-day period allowed by the Act for parties to qualify for the venue selection lottery, if those parties choose to exercise their right to file in a court other than the DC Circuit. According to AGP, in order to assure inclusion in the lottery, parties filing for review in circuits distant from Washington, DC would have to file their petitions no later than the 9th day of the 10-day period.

The Act specifically requires that "[i]f within ten days after the issuance of the order the agency, board, commission, or officer concerned receives from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals * * * the agency, board, commission or officer shall promptly after the expiration of the ten-day period * * * so notify the judicial panel on multidistrict litigation * * * in such form as that panel shall prescribe." (emphasis

¹ 53 FR 37,545 (Sept. 27, 1988); III FERC Stats. & Regs. ¶30,832 (1988).

² Act of Jan. 8, 1988, Pub. L. No. 100-236, 101 Stat. 1731 (1988) (codified at 28 U.S.C. 2112).

³ See 18 CFR 385.2012 (1988).

added) The Act provides further that "a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the Court with the date of filing shall constitute the petition for review." The Commission's regulations comply with the Act. The Act does not provide any latitude or discretion with respect to the 10-day period specified therein. The Commission, therefore, denies rehearing of AGP's petition.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27431 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program; Approval of Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments to the Indiana Abandoned Mine Land Reclamation (AMLR) plan. The amendments consist of minor changes in Indiana policies and procedures regarding project selection, reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, and revises the administrative and management structure of the plan. The amendment revises the AMLR plan to be consistent with the corresponding Federal regulations. After opportunity for public comment and review of the amendment, the Deputy Director of OSMRE has determined that the Indiana amendment meets the requirements of the Surface Mining Control and Reclamation Act (SMCRA) and the Secretary's regulations at 30 CFR Part 884.

EFFECTIVE DATE: The rule is effective December 29, 1988.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Indiana Department of Natural Resources, Division of Reclamation, 309 West Washington Street, Suite 201, Indianapolis, Indiana 46204.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Richard D. Rieke, Director, Indianapolis Field Office, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269-2609.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Indiana AMLR plan effective June 29, 1982. Information pertinent to the general background revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the June 26, 1982, Federal Register (47 FR 32110).

The Secretary has adopted regulations that specify the content requirements of a State Reclamation Plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision. Subsequent actions taken with regard to the Indiana AMLR plan can be found in 30 CFR 914.20 and 914.25.

II. Discussion of Amendments

By letter dated January 22, 1988 (Administrative Record No. IND-0554), Indiana submitted an AMLR plan amendment consisting of revised narratives to replace eleven sections of the approved plan. Specifically, the following areas of the AMLR plan are being revised.

1. Ranking and identification of projects to be funded (30 CFR Part 874): Indiana revised its procedures relating to data acquisition by adding a provision requiring a review of State and Federal law compliance by State legal staff as a part of project eligibility determination. Indiana also modified Table I, the site evaluation matrix, to improve its usefulness. The matrix in the approved plan only considered AML problems in terms of acres and miles of stream affected, and the population density, proximity to it, and proximity to human use areas. Impact scores were included but not weighting factors. The revised evaluation matrix expands the ranking considerations to include site

parameters, namely, human health and safety, environmental, property, and socio-economic impacts; and action parameters, namely, land utilization factors, demonstration of enhanced reclamation technology, cost effectiveness, adverse social and environmental impacts during and after reclamation, and uncorrected conditions which may continue after reclamation. Impact scores and weighting factors are also included in the revised matrix.

2. Coordination with other programs (30 CFR Part 884): Indiana revised its procedures for coordinating the State Reclamation Program with the Rural Abandoned Mine Program (RAMP) by deleting the provision which required a State RAMP committee to identify RAMP projects. Indiana is adding a provision requiring the Division of Reclamation and Soil Conservation Service to develop annual plans to identify RAMP projects. Indiana also removed from this section of the Plan provisions addressing coordination with environmental agencies.

3. Land acquisition (30 CFR Part 879): Indiana revised the land acquisition procedures by adding a requirement that if Indiana obtains land under the AMLR program, prior approval by OSMRE will be obtained and other requirements will be met, pursuant to 30 CFR 879.11(a), (b), (d), and (e).

4. Reclamation on private lands (30 CFR Part 882): Indiana revised the lien waiver procedures and added a provision which allows for prepayment in lieu of lien.

5. Rights of entry (30 CFR Part 877): Indiana submitted revisions relating to nonconsensual entry which add the provision that 30 days notice be given prior to entry; that the mailing of the notice be made return receipt requested, and shall contain a copy of the findings; and that the posted notice be readily visible.

6. Public participation (30 CFR Part 884): Indiana amended the public participation section by adding a description of the procedures it follows to address public awareness on a continuing basis, to the description of procedures for public participation at the time of each annual submission of grant projects. Procedures for public involvement in planning of new grant projects were revised by adding a description of intergovernmental review procedures, realty personnel interactions with landowners, provisions for providing reclamation site and construction activity details to State and Federal agencies having regulatory concerns for compliance purposes, and the format of public meetings.

7. *Organization of designated agency (30 CFR Part 884)*: Indiana updated the administrative and management organization to reflect changes that have occurred in the State agency structure and functions.

8. *Personnel staffing (30 CFR Part 884)*: Indiana revised its provisions on nondiscrimination policy by adding age and condition of handicap to the list of grounds on which no discrimination is to be made.

9. *Procurement (30 CFR Part 886)*: Indiana made revisions relating to procurement procedures by changing the dollar amount above which competitive bidding is required from \$2,500 to \$5,000. The provision that quotations are required for purchases between \$100 and \$2,500, was changed to provide that quotations are required for purchases between \$100 for equipment and \$250 for supply items up to \$5,000.

10. *Accounting system (30 CFR Part 886)*: Indiana proposed revisions which are intended to furnish additional information on State drawdown procedures and the responsibilities of the designated agency's AMLR engineering section, the Public Works Division of the Department of Administration, and the State Auditor with respect to AML construction and design projects.

11. *Endangered and threatened species (30 CFR Part 884)*: Indiana proposed to revise the part of the plan addressing endangered and threatened species by incorporating by reference the current State listing rather than including the listing within the text of the plan and thereby relieve the State of having to update the plan each time the endangered and threatened species list changes. OSMRE published a notice of proposed rulemaking on the Indiana amendment and requested public comment in the March 15, 1988, *Federal Register* (53 FR 8469). The notice addressed the details of the proposed amendment, opened the public comment period, and provided opportunity for a public hearing on their substantive adequacy. Since no public hearings were requested by the public, none were held.

Indiana made minor revisions to the proposed AMLR plan amendment and on June 30, 1988, and August 10, 1988, resubmitted revised narratives of sections of the plan. OSMRE has determined that these revisions are insignificant in nature and require no further public comment.

III. Deputy Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR Part 884, are the Deputy Director's

findings concerning the proposed amendments to the Indiana AMLR Plan.

(1) *Ranking and identification of projects to be funded (30 CFR 884.13(c)(2))*.

Indiana proposed to revise its AMLR Plan by requiring that data acquired relative to the selection of AMLR projects include a project eligibility determination that includes a review of compliance with the State and Federal laws by the State legal staff. The proposed review procedure should result in the strengthening of the State's AMLR plan since the identification and ranking of projects to be funded is predicated on prior eligibility determination. This review is particularly relevant to ascertaining continuing reclamation responsibility.

Indiana also revised its AMLR site evaluation matrix. The modifications are improvements that should allow the matrix to be more useful in meeting the requirements for ranking and selection of projects consistent with the objectives of section 403 of SMCRA.

The Deputy Director finds that the proposed changes are in accordance with the requirements of SMCRA and no less effective than the Federal regulations and can be approved.

(2) *Coordination with other programs (30 CFR Part 884)*.

Indiana proposes to require the Division of Reclamation and the Soil Conservation Service to cooperatively develop annual work plans to identify RAMP projects rather than to identify RAMP projects through a State RAMP committee as is currently required. This approach is reasonable and should be an effective method of identifying RAMP projects. The Deputy Director finds that the amendment is consistent with 30 CFR 884.13(c)(3) and can be approved.

(3) *Land acquisition (30 CFR Part 879)*.

Indiana proposes to revise the land acquisition provisions to require that Indiana obtain OSMRE approval prior to the acquisition of land, and to require that the provisions of 30 CFR 879.11 (a), (b), (d), and (e) be met. The Deputy Director finds that the Indiana provisions are in compliance with 30 CFR 884.13(c)(4) and can be approved.

(4) *Reclamation on private lands (30 CFR Part 882)*.

Indiana proposes to revise the lien waiver provisions and add a provision which allows for prepayment in lieu of a lien.

The Deputy Director finds that these provisions are consistent with the Federal provisions at 30 CFR 882.13 (3) and (4), and 882.14 and can be approved.

(5) *Rights of entry (30 CFR Part 877)*.

Indiana proposes to add a provision which states that 30 days prior notice

must be given to landowners in the event of nonconsensual entry and that such notice be mailed return receipt requested and include a copy of pertinent findings. The State further proposes that the plan contain a requirement that the posted notice be readily visible as is required by Federal regulations.

The Deputy Director finds that the amended provisions are similar to and therefore no less effective than the Federal provisions at 30 CFR Part 877.13(c) and can be approved.

(6) *Public participation (30 CFR Part 884)*.

Indiana proposes to add to the public participation section the procedures it follows to inform the public on an ongoing basis of the state's AMLR activities. Indiana has also added a description of its intergovernmental review process, the role of realty personnel, the procedures for obtaining review and concurrence from State and Federal agencies with regulatory concerns, and the format of public meetings. The proposed revisions are reasonable and should enhance the AMLR plan by providing a better description of the policies and procedures followed by the designated agency with respect to public participation and involvement in the reclamation program.

The Deputy Director finds that the proposed revisions are consistent with the Federal regulations and can be approved.

(7) *Organization of designated agency (30 CFR Part 884)*.

Indiana proposes to update its AMLR Plan to reflect changes that have occurred in agency structure.

The Deputy Director finds that the proposed amendments are consistent with the requirements of 30 CFR 884.13(d)(1) and can be approved.

(8) *Personnel staffing (30 CFR Part 884)*.

Indiana proposes to revise its personnel staffing section by adding age and condition of handicap to the list of grounds on which no discrimination against people shall be made.

The Deputy Director finds that the revisions are consistent with 30 CFR 884.13(d)(2) and can be approved.

(9) *Procurement (30 CFR Part 886)*.

Indiana proposes to revise its procurement section by changing the threshold dollar amounts above which competitive bidding is required and changes the provisions which specify when quotations are required for equipment and supply purchases. The proposed changes update the information in the AMLR plan to more

accurately describe that aspect of the designated agency's management system.

The Deputy Director finds that the changes are reasonable and are consistent with 30 CFR 884.13(d)(3) and can be approved.

(10) Accounting system (30 CFR Part 886).

Indiana proposes revisions which provide additional information about the designated agency's accounting system regarding drawdown procedures and various State agency responsibilities and roles relating to it. The proposed revisions provide additional information which enhances the AMLR Plan and more fully describes the State's accounting system.

The Deputy Director finds that the proposed changes are consistent with 30 CFR 884.13(d)(4) and can be approved.

(11) Endangered and threatened species (30 CFR Part 884).

Indiana proposes to incorporate the endangered and threatened species list into the AMLR plan by reference rather than by including the actual listing within the text as is currently the case. With the incorporation of this change it will not be necessary to amend this section each time a species is added to or deleted from the list.

The Deputy Director finds that this approach is reasonable and is consistent with 30 CFR 884.13(f)(3) and can be approved.

(12) Additional Findings.

The State has the legal authority, policies, and administrative structure necessary to implement the amendment.

The proposed plan amendment meets all requirements of the OSMRE AMLR Program provisions.

The State has an approve Surface Mining Regulatory Program.

The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

IV. Agency and Public Comment

As discussed in the section of this notice entitled "Discussion of Amendments," the Deputy Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public during or after the comment period which closed on April 14, 1988. Since no one requested an opportunity to testify, the public hearing scheduled for April 11, 1988, was cancelled.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana plan. A summary of the comments received and their disposition appears below.

The U.S. Fish and Wildlife Service suggested that the State Plan (1) provide, directly or by reference, for coordination with the Service in accordance with the Fish and Wildlife Coordination Act and the Endangered Species Act; and (2) provide assurance that the Service be notified of any AML project impact on property having received Federal aid from the Service. The OSMRE has considered this comment and finds these suggestions are addressed in the plan by reference to the role of the Indiana Department of Natural Resources, Division of Fish and Wildlife, and by the fact that the suggested coordination is already provided for under Federal Fish and Wildlife legislation.

V. Deputy Director's Decision

Based on the Findings enumerated above, the Deputy Director is approving the amendment package. The Deputy Director is also amending 30 CFR Part 914 to codify his approval of the Indiana amendment submitted on January 22, 1988, and amended on June 30, 1988, and August 10, 1988. A copy of the approved amendment can be obtained by contacting the offices listed under "ADDRESSES."

VI. Procedural Matters

1. National Environmental Policy Act: The Office of Surface Mining Reclamation and Enforcement has determined that the approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(31).

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No burden will be imposed upon entities operating in compliance with the Act.

3. Federal Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: November 21, 1988.

Robert E. Boldt,
Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. A new § 914.25 is added to read as follows:

§ 914.25 Amendments to approved Indians abandoned mine land reclamation plan.

The following amendments to the Indiana AMLR plan, as submitted on January 22, 1988, and modified on June 30, 1988, and August 10, 1988, are approved effective December 29, 1988: Revisions to the Indian AMLR plan which concern policies and procedures regarding project selection reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, and a revised administrative and management structure of the plan.

[FR Doc. 88-27436 Filed 11-28-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zones in Albemarle Sound, Pamlico Sound, and Adjacent Waters, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish danger zones in Albemarle Sound, Pamlico Sound, and adjacent waters to delete the danger zone which is located along the north shore of Albemarle Sound. The area is no longer used and the Navy has requested it be opened to public use. A change is also

being made in the designation of the Agency responsible for enforcing the regulations which reflects a change in Navy organization.

DATE: Effective date: December 29, 1988.

ADDRESS: USACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hollis at (919) 343-4629 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commander, Fighter Medium Attack Airborne Early Warning Wings, Atlantic, has requested (1) that the Corps of Engineers amend the regulations in 33 CFR 334.410 to reflect a change in the command responsible for enforcing the regulations. The Commander, Fighter Medium Attack Airborne Early Warning Wings, Atlantic shall be responsible for enforcing these regulations in lieu of the Commander Fleet Air Norfolk, and (2) that the danger zone in subsection (b)(1) *Along north shore of Albemarle Sound*, be deleted. The area is no longer used by the Navy.

The Corps of Engineers has determined that notice of proposed rulemaking and public procedures thereto are unnecessary because the amendment will relieve a restriction on the general public by allowing access to a water area previously closed to the public. In addition, the disestablishment of a Naval Command and the naming of another command to assume enforcement responsibilities for the restricted area will have no discernible impact on the public and is generally a matter involving Agency organization. The Wilmington District Engineer will issue a public notice to all known interested parties concurrent with the publication of these Federal Register documents.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I certify that this amendment to the regulations in 33 CFR 334.410 will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending Part 334 of Title 33 as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. In § 334.410 the heading for (b) is removed and paragraph (b)(1) is removed, the designation and heading of paragraph (b)(2)(i) are removed, (b)(2) is redesignated as (b) and the heading is revised, and paragraphs (d) (2) and (4) are revised to read as follows:

§ 334.410 *Albemarle Sound, Pamlico Sound, and adjacent waters, NC; danger zones for naval aircraft operations.*

(b) *Target and bombing area along south shore of Albemarle Sound.* * * *

(d) The regulations. * * *

(2) *Target and bombing area.* The area described in paragraph (b) of this section will be used as a target and bombing area for both day and night operations. Dummy ammunition, waterfilled or smoke bombs and inert rockets will be used, except during wartime when live ammunition, bombs and rockets may be used. The area will be open to navigation except for periods when ordnance exercises are being conducted by naval aircraft. In area B described in paragraph (b) of the section the placing of nets, traps, buoys, pots, fishponds, stakes, or other equipment which may interfere with target vessels operating in the area shall not be permitted. The area will be patrolled and vessels shall clear the area under patrol upon being warned by the surface patrol craft or when "buzzed" by patrolling aircraft. As a further means of warning vessels of naval aircraft operations in the area described in paragraph (b) of this section, a cluster of flashing red lights at night and a large red flag by day will be displayed from the range observation tower located in the approximate center of the shore side of this area.

(4) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Fighter Medium Attack Airborne Early Warning Wings, Atlantic, and such agencies as he/she may designate.

Date: November 7, 1988.

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 88-26903 Filed 11-28-88; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF EDUCATION

34 CFR Part 790

Territorial Teacher Training Assistance

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Secretary amends the regulations governing the Territorial Teacher Training Assistance Program. The purpose of the amendments is to remove unnecessary and duplicative material from the regulations. The Secretary takes this action to clarify and improve the regulations.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Haroldie K. Spriggs, Project Officer, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 500-J, Washington, DC 20208. (202) 357-6116.

SUPPLEMENTARY INFORMATION:

The Territorial Teacher Training Assistance Program provides Federal assistance for the training of teachers in schools in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and, on a transitional basis, the entities of the former Trust Territory of the Pacific Islands.

On December 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the Territorial Teacher Training Assistance Program in the Federal Register (52 FR 46785).

These regulations delete duplicative material in §§ 790.3, 790.20, 790.40, and 790.42. References to specific applicable portions of the Education Department General Administrative Regulations (EDGAR) are deleted since the applicability of the relevant parts is made clear in § 790.3 of the regulations.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments. However, technical changes have been made to the reference concerning the Trust Territory of the Pacific Islands due to the enactment of the Compact of Free Association.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order

12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernment Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 790. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 790

American Samoa colleges and universities, Education, Federal States of Micronesia grant programs—education, Guam, Northern Mariana Islands, Republic of the Marshall Islands, Republic of Palau, Teachers, Virgin Islands.

(Catalog of Federal Domestic Assistance Number 84.124: Territorial Teacher Training Assistance)

Dated: November 18, 1988.

Lauro F. Cavazos,
Secretary of Education.

The Secretary amends Part 790 of Title 34 of the Code of Federal Regulations as follows:

PART 790—TERRITORIAL TEACHER TRAINING ASSISTANCE

1. The authority citation for Part 790 is revised to read as follows:

Authority: 20 U.S.C. 3142, unless otherwise noted.

2. Section 790.1 is revised to read as follows:

§ 790.1 Description of the Territorial Teacher Training Assistance Program.

The Territorial Teacher Training Assistance Program provides Federal assistance for the training of teachers in schools in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Virgin Islands, and, on a transitional basis, the entities of the former Trust Territory of the Pacific Islands.

(Authority: 20 U.S.C. 3142; 48 U.S.C. 1681)

3. Section 790.2 is revised to read as follows:

§ 790.2 Eligible parties.

(a) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory, are each eligible to receive a grant. The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.

(b) The Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands are each eligible to receive a grant in fiscal year 1989. Each grant is limited to an amount determined under the declining funding cap provision at section 105(i)(2) of the Compact of Free Association.

(c) If a jurisdiction desires a grant, its SEA—either alone or in conjunction with an IHE—shall submit an application. If an SEA submits an application in conjunction with an IHE, the SEA remains fully responsible for the administration of the project.

(Authority: 20 U.S.C. 3142; 48 U.S.C. 1681)
(Approved by the Office of Management and Budget under Control Number 1850-0619)

4. Section 790.3 is revised to read as follows:

§ 790.3 Regulations that apply to the Territorial Teacher Training Assistance Program.

The following regulations apply to grants under the Territorial Teacher Training Assistance Program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), Part 79 (Intergovernmental Review of Department of Education Programs and Activities) and Part 80 (Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 790.
(Authority: 20 U.S.C. 3142)

5. Section 790.20 is revised to read as follows:

§ 790.20 How to apply for funds.

The Secretary makes a grant only if the applicant submits an application meeting the following requirements:

(a) For the first year of the program an application must contain—

(1) A needs assessment defining teacher training needs of both public and private schools in the jurisdiction covered by the application;

(2) A four-year plan explaining the methods to be employed and activities to be conducted to meet the teacher training needs identified in paragraph (a)(1) of this section;

(3) A detailed explanation of the goals, objectives, and activities to be carried out in the first year of the program;

(4) A detailed proposed budget for the accomplishment of the activities described in paragraph (a)(3) of this section for the fiscal year for which the application is submitted; and

(5) The estimated funding needs for each subsequent year of the four-year plan.

(b) For grantees eligible to receive grants in subsequent years under § 790.2 (a) and (b), for each subsequent year of the program, an application must contain—

(1) Any revisions to the needs assessment statement or amendments to the four-year plan statement submitted under paragraphs (a) (1) and (2) of this section;

(2) A statement describing the extent to which the previous year's project met the goals and objectives set forth in that year's application;

(3) A detailed explanation of the activities to be carried out for the current project year;

(4) A detailed proposed budget for the current project year; and

(5) An updated estimate of funding needs for the subsequent years of the project.

(Authority: 20 U.S.C. 3142)
(Approved by the Office of Management and Budget under Control Number 1850-0619)

6. Section 790.40 is amended by revising paragraph (a) to read as follows:

§ 790.40 Allowable costs.

(a) Funds under this part may be used to cover all or part of the cost of

establishing and implementing a teacher training assistance project.

§ 790.42 [Amended]

7. Section 790.42 is amended by removing paragraph (b) and the paragraph designation "(a)".

[FR Doc. 88-27512 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3480-7]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects minor errors in the preamble and final rule on standards of performance for new stationary sources for the magnetic tape manufacturing industry that appeared in the *Federal Register* on October 3, 1988 (53 FR 38892). It also clarifies certain language of the preamble and final rule.

FOR FURTHER INFORMATION CONTACT:

Mr. Sims L. Roy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone number (919) 541-5263).

List of Subjects in 40 CFR Part 60

Air pollution control, Magnetic tape manufacturing (SIC Code 3695 (1987 Edition)), Reporting and recordkeeping requirements.

Date: November 17, 1988.

Eileen Claussen,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made to the preamble and final rule on standards of performance for new stationary sources for the magnetic tape manufacturing industry that appeared in the *Federal Register* on October 3, 1988 (53 FR 38892).

1. On page 38893, in the first column, in the 12th and 13th lines, the words "in accordance with" should be removed.

2. On page 38895, in the third column, in the 14th line from the bottom, "requires" should read "require".

3. On page 38899, in the first column, in the first full paragraph, in the 12th line, "on" should read "in".

4. On page 38903, in the second column, the third full sentence, which reads "If, however, an owner or operator submits specific information to the Administrator that justifies the need for retained solvent in the product, the revised standards now allow the fraction of retained solvent to be included in the material balance calculation as VOC recovered rather than as a fugitive emission.", should be revised to read as follows:

"If, however, an owner or operator submits specific information to the Administrator that documents the quantity of solvent retained in the product, for purposes of a liquid-liquid material balance, the final standards allow that quantity of solvent to be subtracted from the quantity of VOC applied at the coating applicator."

5. In the same column, in the 13th line from the bottom, "(IV-F-1)" should read "(see docket item IV-F-1)".

6. On page 38904, the first column, in the fourth line of the first full paragraph, a comma should be inserted after the word "commenter".

7. On page 38906, in the second column, in the fourth line from the bottom, "on" should read "in".

8. On page 38914, in the first column, in the paragraph under the heading "List of Subjects in 40 CFR Part 60," "(SIC Codes 3679, 3573)" should read "(SIC Code 3695 (1987 Edition))".

PART 60—[AMENDED]

§ 60.711 [Amended]

9. In § 60.711(b)(26), on page 38916, in the second column, in the first line, "on" should read "in".

§ 60.712 [Amended]

10. On the same page, Table 1a, in the second column, in the fourth line under § 60.712(b)(1)(ii), the word "device" should be inserted after the word "control".

§ 60.713 [Amended]

11. On page 38918, in § 60.713(a)(3)(i), in the third column, in the third line, "paragraph" should read "paragraphs".

12. In the second column on that page, in the first line of § 60.713(a), "\$" should read "\$".

13. On page 38920, in the second column, in § 60.713(b)(5)(i)(D), the second sentence, which reads "If FV is less than or equal to 9,000 meters per hour, the continuous inward airflow shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator while the procedures specified above in paragraph (b)(5)(i)(C) of this section are

carried out.", should be revised to read as follows:

"If FV is less than or equal to 9,000 meters per hour, the continuous inward flow of air shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator over the period that the volumetric flow rate tests required to determine FV are carried out."

§ 60.717 [Amended]

14. In § 60.717(d)(2), on page 38923, in the first line of the first column, "average solvent content of any coating" should read "weighted average solvent content (G) of the coatings".

15. On the same page, in the second column, in § 60.717(d)(4)(ii)(C), the sixth and seventh lines, which read "reconstruction or 0.95 (95 percent), whichever is lower.", should read "reconstruction."

16. In the same column, in § 60.717(d)(7), the final word should be changed from "or" to "and".

17. On the same page, in the third column, in the second line of § 60.717(h), "(b) through (g)" should read "(b) through (e)".

§ 60.718 [Amended]

18. On page 38924, in § 60.718(b), the second listed section, which reads "§ 60.713(a)(4)", should be removed.

[FR Doc. 88-27067 Filed 11-28-88; 8:45 am]

BILLING CODE 5560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6689

[MT-930-09-4214-10; SDM 019680]

Withdrawal of National Forest System Land for Addition to Steamboat Rock Picnic Ground, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 50 acres of National Forest System land from mining for 20 years to protect recreation values. The land has been and will remain open to appropriate forms of surface entry and to mineral leasing.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714; it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2) as an addition to the Steamboat Rock Picnic Ground withdrawal established by Public Land Order No. 1343:

Black Hills Meridian

Steamboat Rock Picnic Ground

T. 2 N., R. 5 E.,

Sec. 1, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
and NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 50 acres in Lawrence County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

November 18, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-27414 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-DN-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1831

Changes to NASA FAR Supplement on Travel Costs

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of interim rule.

SUMMARY: This notice withdraws the interim rule on travel costs published in the Federal Register on Friday, April 24, 1987 (52 FR 13685).

EFFECTIVE DATE: November 17, 1988.

FOR FURTHER INFORMATION CONTACT:

W. A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters,

Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The interim rule was issued in compliance with Pub. L. 99-234, Title II, Section 201. The withdrawal action is taken in compliance with Pub. L. 100-679, effective November 17, 1988, which, *inter alia*, limits the application of Pub. L. 99-234.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls within the exemption. This deletion will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) This rule imposes no burden within the ambit of the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Part 1831

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Part 1831 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.3—[Removed]

Subpart 1831.7—[Removed]

2. Part 1831 is amended by removing subparts 1831.3 and 1831.7.

[FR Doc. 88-27415 Filed 11-28-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 80459-8179]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule.

SUMMARY: NOAA issues this final rule as an addition to the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The rule makes it a Federal requirement that all landings of

groundfish be reported to the appropriate State in compliance with State laws. The intended effect of this action is to improve the ability of the NMFS and the States of California, Oregon, and Washington to accurately monitor landings receipts for individual fishing trips and account for all landings of groundfish, without imposing any new data collection requirements.

Furthermore, it would enhance enforcement, and could provide more reliable and timely information to improve fishery management, particularly in-season actions.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Rodney R. McInnis, Fisheries Management Division, Southwest Region, Terminal Island, California (213-514-6202), or William Robinson, Fisheries Management Division, Northwest Region, Seattle, Washington (206-526-6142).

SUPPLEMENTARY INFORMATION: No Federal reports are currently required of domestic fishermen, processors, or dealers under regulations implementing the FMP as long as the data collection systems of the States provide the Secretary of Commerce with statistical information adequate for management. State requirements are found in the Washington Administrative Code 220-69, Oregon Administrative Rules 635-06, and California Fish and Game Code Articles 6 and 7. The proposed rule published on June 15, 1988 (53 FR 22366), explains that State data collection systems still are adequate for management, but the timeliness and accuracy of submitted data could be improved if there was a Federal requirement for fishermen to report each landing to their respective States as required by State laws. State and Federal enforcement officers could then cooperate to ensure that all landings are properly reported. This action implements that requirement and enhances the ability of NMFS enforcement agents to monitor landings.

There are no environmental or economic effects from implementing the regulatory change, because it will not affect the amount of groundfish harvested, the species harvested, or the time and location of fishing activity. This is an administrative action, which will have no effect on marine resources, ocean and coastal habitats, or public health and safety. No new Federal reporting requirements are being implemented.

Public Comments

No comments were received during the public comment period.

Classification

The final rule is published under authority of section 305(g) of the Magnuson Act and was prepared at the request of the Pacific Fishery Management Council. The Assistant Administrator For Fisheries, NOAA, (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries of the Pacific coast and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that the final rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42, U.S.C. 4321 *et seq.*, by NOAA Directive 02-10, because it would not result in any significant change from the status quo and because the reporting of landing data is a routine administrative action with limited potential for effect on the human environment.

The Under Secretary for Oceans and Atmosphere (Under Secretary) also had determined that it is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The rule will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment,

investments, productivity, innovation, or competitiveness of U.S. based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, because it does not create any new burdens. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain new collection of information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Under Secretary has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of California, Oregon, and Washington. This determination was submitted for review to the responsible state agencies under section 307 of the Coastal Zone Management Act. The States failed to comment within the statutory time period; therefore, the States' agreements are presumed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Dated: November 19, 1988.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 663 is amended as follows:

PART 663—[AMENDED]

1. The authority citation for Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.4 the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 663.4 Reports.

(b) Any person who is required to do so by the applicable State law must make and/or file any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable State law.

3. In § 663.7, the period following paragraph (q) is changed to a semicolon and a new paragraph (r) is added to read as follows:

§ 663.7 Prohibitions.

(r) To falsify or fail to make and/or file, any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 663.4, provided that person is required to do so by the applicable State law.

[FR Doc. 88-27269 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-88-124]

Dairy Promotion Program; Invitation to Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes an amendment to the Dairy Promotion and Research Order and provides for comment on the amendment. The proposal would modify the composition of the National Dairy Promotion and Research Board by adding one Board seat to Region 2 (California) and removing one Board seat from Region 5 (Minnesota, North Dakota, and South Dakota). The proposal was submitted by the National Dairy Promotion and Research Board that administers the order. The initial Board of 36 dairy farmers was established in 1984 with each Board member representing an equal proportion of total United States milk production in 13 geographic regions on the basis of 1983 milk production. The Board has proposed that the composition of the Board be modified to reflect changes in milk production that have occurred since the initial Board was established. The proposed modification of the number of Board seats for the two regions is based on a review of 1987 milk production for 48 States published by the Department of Agriculture.

DATE: Comments must be postmarked not later than December 29, 1988.

ADDRESS: Comments should be sent to: Director, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Marcia Gibney, Chief, Promotion and Research Staff, USDA/AMS/Dairy

Division, Room 2934, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6961.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. The proposed change in the composition of the National Dairy Promotion and Research Board will result in no economic effect on any entity engaged in the dairy industry. Also, this proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Statement of Consideration

The Dairy Promotion and Research Order specifies that the National Dairy Promotion and Research Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or a modification of members from regions to best reflect the geographic distribution of milk production. The order also specified the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region.

The initial Board established in 1984 was based on 1983 milk production. Each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States during 1983. During 1987, total milk production increased to 142,271 million pounds, which indicates that each of the 36 Board members would represent 3,952 million pounds of milk.

Based on a review of the 1987 geographic distribution of milk

production, the Board has concluded that the number of Board members for two of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 17,934 million pounds in 1987 from 14,743 million pounds in 1983, indicating 4.54 Board members based on 1987 production (17,934 divided by 3,952 = 4.54) compared to 3.8 Board members based on 1983 production (14,743 divided by 3,875 = 3.80). Also, milk production in Region 5 (Minnesota, North Dakota and South Dakota) decreased to 13,298 million pounds in 1987 from 13,832 million pounds in 1983, indicating 3.36 Board members based on 1987 production (13,298 divided by 3,952 = 3.36) compared to 3.57 Board members based on 1983 production (13,832 divided by 3,875 = 3.57). Thus, the Board has proposed that the number of Board members for Region 2 be increased from four to five and that the number of Board members for Region 5 be decreased from four to three so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

PART 1150—[AMENDED]

The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: Pub. L. 98-180, 97 Stat. 1128.

The proposed amendment, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by the National Dairy Promotion and Research Board

Revise § 1150.131 (a)(2) and (5) to read as follows

§ 1150.131 Establishment and membership.

(a) * * *

(2) Five members from region number two comprised of the following State: California.

* * * * *

(5) Three members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

* * * * *

Signed at Washington, DC, on: November 23, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-27434 Filed 11-28-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1770

Revision and Codification of REA's Accounting System Requirements for Telephone Borrowers of the Rural Electrification Administration

AGENCY: Rural Electrification Administration (REA); USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposes to amend 7 CFR Chapter XVII, REA Regulations, by adding a new part, Part 1770, Accounting, consisting of Subpart A, Accounting System Requirements. Current REA policy on this subject is set forth in REA Bulletin 461-1, Accounting System Requirements for Telephone Borrowers of the Rural Electrification Administration. As part of REA's continuing effort to codify its policies and procedures, this new part and subpart are being proposed. In addition to codifying its policies and procedures, revisions are being proposed to the existing system that will coincide with the revision of the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies as set forth in Part 32 of the Commission's Rules and Regulations. Once the proposed rule is published final, REA Bulletin 461-1 will be rescinded.

DATE: Public comments must be received by REA no later than January 30, 1989.

ADDRESS: Submit written comments to Mr. William E. Davis, Director, Borrower Accounting Division, Rural Electrification Administration, Room 2231, South Building, U.S. Department of Agriculture, Washington, DC, 20250. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Davis, Director, Borrower Accounting Division, at the above address, telephone number (202) 382-9450. The Draft Impact analysis describing the options considered in developing and implementing the proposal is available upon request from the above office.

SUPPLEMENTARY INFORMATION: REA

proposes to amend 7 CFR Chapter XVII, REA Regulations, by adding a new part, Part 1770, Accounting, consisting of Subpart A, Accounting System Requirements. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in major increases in costs or prices for consumers, individual industries, Federal State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment. This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.). The program listed in the Catalog of Federal Domestic Assistance that is impacted is 10.851—Rural Telephone Loans and Loan Guarantees. For reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, (50 FR 47035, November 14, 1985) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

In order to facilitate the effective and economically operation of a business enterprise, adequate and reliable financial records must be maintained. Accounting records must provide a clear and accurate picture of the enterprise's current economic condition from which management can make informed decisions in charting the company's future. A telecommunications carrier, because of the rate regulated environment in which it operates, possesses an even greater need for financial information that is accurate, complete, and comparable with that generated by other carriers. For this reason, the Federal Communications Commission (FCC) prescribes a Uniform

System of Accounts for the telecommunications industry.

REA, in representing the federal government as mortgagee and in furthering the objectives of the Rural Electrification Act, has a special concern that adequate records are maintained. Due to the cooperative organization of many of our borrowers and the provisions included in REA's mortgage agreements and lien accommodations, REA has augmented the FCC Uniform System of Accounts with supplementary accounts that will provide the financial information necessary to operate a rural telecommunications enterprise.

The current system prescribed in Parts 31 and 33 of the FCC Rules and Regulations were developed at a time when a rigid institutionalized regulatory environment was expected to continue indefinitely. With the introduction of competition and a variety of new products and services in the last decade, the existing systems of accounts became inadequate to handle the needs of the telecommunications carrier. As a result, the FCC has adopted a revised Uniform System of Accounts as set forth in Part 32 of their Rules and Regulations. Effective January 1, 1988, Part 32 shall be implemented in its entirety and the current systems rescinded.

This evolution has also necessitated a change in the accounting requirements and supplemental accounts prescribed by REA. The provisions and requirements detailed in Part 1770, Subpart A, coincide with Part 32 and, if adopted, are to become effective with its implementation on January 1, 1988.

List of Subjects in 7 CFR Part 1770

Accounting.

In view of the above, REA hereby proposes to add a new part, Part 1770, Accounting, consisting of Subpart A, Accounting System Requirements, to 7 CFR Chapter XVII to read as follows:

PART 1770—ACCOUNTING

Subpart A—Accounting System Requirements

Sec.

- 1770.10 General.
- 1770.11 Accounting system requirements.
- 1770.12 Supplementary accounts.
- 1770.13 Accounting requirements.
- 1770.14 Continuing property records.
- 1770.15 Supplementary accounts required of all borrowers.
- 1770.16 Supplementary accounts required of nonprofit organizations.

Authority: 7 U.S.C. 901 et seq.

Subpart A—Accounting System Requirements

§ 1770.10 General.

This subpart implements provisions of the standard REA loan documents with respect to the accounting system to be maintained by telecommunications borrowers of the Rural Electrification Administration.

§ 1770.11 Accounting System Requirements.

(a) Each REA borrower subject to the jurisdiction of the Federal Communications Commission (FCC) or a State regulatory body shall maintain its accounts and records in accordance with the rules and regulations prescribed by that regulatory body.

(b) Each REA borrower not subject to regulatory control as specified in § 1770.11 (a) shall maintain its accounts and records in accordance with the FCC Uniform System of Accounts as set forth in Part 32 of the Commission's Rules and Regulations.

(1) REA borrowers having annual revenues derived from regulated telecommunications operations of \$100,000,000 or more shall maintain the accounts prescribed in Part 32 for Class A companies.

(2) REA borrowers having annual revenues derived from regulated telecommunications operations of less than \$100,000,000 shall maintain the accounts prescribed in Part 32 for Class B companies.

(3) REA borrowers maintaining the accounts prescribed for Class B companies may adopt the Class A accounts if they desire more detailed and sophisticated accounting records.

§ 1770.12 Supplementary Accounts.

(a) All borrowers shall maintain the supplementary accounts set forth in § 1770.15. These accounts conform in number and title with accounts prescribed in the FCC Uniform System of Accounts. In those instances where a State regulatory body having jurisdiction over an REA borrower has prescribed a system of accounts differing from that of the FCC, the account titles prescribed by REA in § 1770.15 shall remain unchanged. The supplementary account numbers shall be changed to conform with the State's accounting system.

(b) Cooperative or other nonprofit borrowers shall maintain the supplementary accounts set forth in § 1770.16.

§ 1770.13 Accounting Requirements.

(a) Each borrower shall maintain its books of accounts on the accrual basis of accounting. All transactions shall be recorded in the period incurred and reconciled monthly. The books of accounts shall be closed at the end of each fiscal year and financial statements shall be prepared for the period.

(b) All books of accounts, records, and memoranda shall be maintained in

such a manner as to fully support the journal entries to which they relate. The books and records referred to herein shall also include accounting records of a nontechnical nature such as minute books, stock, and membership records, reports, correspondence, and memoranda.

(c) Interpretations of Federal or State requirements shall be referred to the applicable commission having jurisdiction over the borrower.

(d) Interpretations of REA accounting requirements shall be referred to the appropriate Telephone Area office of REA.

§ 1770.14 Continuing Property Records.

Each borrower shall maintain continuing property records which detail the date of placement, location, description of property, and the original cost of the property record units. The continuing property record and other underlying records of construction costs shall be maintained so that upon retirement of one or more retirement units or of minor items without replacement when not included in the costs of retirement units, the actual cost of the plant retired can be determined.

§ 1770.15 Supplementary Accounts Required of all Borrowers.

Accounts prescribed in the Stockholders' Equity and Patronage Capital section shall be maintained by stock companies and cooperative as necessary.

Class of Company (Account Number)		Account Title
A	B	
		<i>Current Assets</i>
1130.1	1120.11	Cash—General Fund.
1130.2	1120.12	Cash—Construction Fund Trustee.
1130.3	1120.13	Cash—Transfer of Funds.
	1120.21	Special Cash Deposits.
1150.1	1120.31	Petty Cash Fund.
1150.2	1120.32	Change Fund.
		<i>Supplies</i>
1220.1	1220.1	Materials and Supplies.
1220.2	1220.2	Property Held for Sale or Lease.
1220.3	1220.3	Exempt Materials—Clearing.
		<i>Prepayments</i>
	1280.1	Prepaid Rents.
	1280.2	Prepaid Taxes.
	1280.3	Prepaid Insurance.
	1280.4	Prepaid Directory Expenses.
	1280.5	Other Prepayments.
		<i>Investments</i>
1402.1	1402.1	Investments in Nonaffiliated Companies—Class B RTB Stock.
1402.11	1402.11	Investments in Nonaffiliated Companies—Class B RTB Stock—Cr.
1402.2	1402.2	Investments in Nonaffiliated Companies—Class C RTB Stock.
1402.3	1402.3	Other Investments in Nonaffiliated Companies.
		<i>Property, Plant, and Equipment</i>
2001.1	2001.1	Telecommunications Plant in Service—Classified.
2002.2	2001.2	Telecommunications Plant in Service—Unclassified.
2003.1	2003.1	Telecommunications Plant Under Construction—Short Term—Contract.
2003.2	2003.2	Telecommunications Plant Under Construction—Short Term—Force Account.
2003.3	2003.3	Telecommunications Plant Under Construction—Short Term—Work Orders.
2004.1	2004.1	Telecommunications Plant Under Construction—Long Term—Contract.
2004.2	2004.2	Telecommunications Plant Under Construction—Long Term—Force Account.
2004.3	2004.3	Telecommunications Plant Under Construction—Long Term—Work Orders.

Class of Company (Account Number)		Account Title
A	B	
		<i>Telecommunications Plant in Service</i>
	2210.11	Central Office Switching—Analog.
	2210.21	Central Office Switching—Digital.
	2210.31	Central Office Switching—Electro-Mechanical—Step-by-Step.
	2210.32	Central Office Switching—Electro-Mechanical—Crossbar.
	2210.33	Central Office Switching—Electro-Mechanical—Other.
	2230.11	Central Office Transmission—Radio Systems—Satellite and Earth Station Facilities.
	2230.12	Central Office Transmission—Radio Systems—Other.
	2230.21	Central Office Transmission—Circuit Equipment.
		<i>Depreciation and Amortization</i>
3100x	3100x	Retirement Work in Progress
		<i>Current Liabilities</i>
4010.11	4010.11	Accounts Payable to Affiliated Companies.
4010.21	4010.21	Accounts Payable to Nonaffiliated Companies.
4010.22	4010.22	Accounts Payable—Employees' Income Tax Withheld.
4010.23	4010.23	Accounts Payable—FICA Taxes Withheld.
4010.24	4010.24	Accounts Payable—Federal Excise Taxes.
4010.25	4010.25	Accounts Payable—Payroll.
4070.1	4070.1	Income Taxes Accrued—Federal.
4070.2	4070.2	Income Taxes Accrued—State and Local.
4080.1	4080.1	Other Taxes Accrued—Property.
4080.2	4080.2	Other Taxes Accrued—Employer's Portion—FICA.
4080.3	4080.3	Other Taxes Accrued—Federal Unemployment.
4080.4	4080.4	Other Taxes Accrued—State Unemployment.
4080.5	4080.5	Other Taxes Accrued—Miscellaneous.
4120.1	4120.1	Unmatured Interest Accrued—REA Notes.
4120.2	4120.2	Unmatured Interest Accrued—Telephone Bank Notes.
4120.3	4120.3	Other Accrued Liabilities.
		<i>Long-Term Debt</i>
4210.11	4210.11	Funded Debt—Other.
4210.12	4210.12	REA Notes.
4210.13	4210.13	Telephone Bank Notes.
4210.14	4210.14	Federal Financing Bank Notes.
4210.15	4210.15	Bank for Cooperatives Notes.
4210.16	4210.16	Rural Telephone Finance Cooperative Notes.
4210.17	4210.17	REA Notes—Deferred Interest.
4210.18	4210.18	REA Notes—Advance Payments, Dr.
4210.19	4210.19	Funded Debt—Other—Unadvanced, Dr.
4210.20	4210.20	REA Notes—Unadvanced, Dr.
4210.21	4210.21	Telephone Bank Notes—Unadvanced, Dr.
4210.22	4210.22	Federal Financing Bank Notes—Unadvanced, Dr.
4210.23	4210.23	Bank for Cooperatives Notes—Unadvanced, Dr.
4210.24	4210.24	Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.
		<i>Stockholder's Equity and Patronage Capital</i>
4540.11	4540.11	Capital Stock Subscribed.
4540.12	4540.12	Memberships Subscribed but Unissued.
4540.13	4540.13	Members' Equity Certificates Subscribed but Unissued.
4540.21	4540.21	Memberships Issued.
4540.22	4540.22	Members' Equity Certificates Issued.
4540.23	4540.23	Members' Equity—Other.
4540.31	4540.31	Installments Paid on Capital Stock.
4540.32	4540.32	Installments Paid on Memberships Subscribed.
4540.33	4540.33	Installments Paid on Equity Certificates Subscribed.
4540.41	4540.41	Other Capital.
4550.1	4550.1	Operating Margins.
4550.2	4550.2	Nonoperating Margins.
4550.3	4550.3	Other Margins.
4550.4	4550.4	Patronage Capital Assignable.
4550.5	4550.5	Patron's Capital Credits Assigned.
4550.6	4550.6	Gain on the Retirement of Capital Credits.
		<i>Plant Specific Operations Expense</i>
	6210.11	Analog Electronic Expense.
	6210.21	Digital Electronic Expense.
	6210.31	Electro-Mechanical Expense.
	6230.11	Radio Systems Expense.
	6230.21	Circuit Equipment Expense.
		<i>Plant Nonspecific Operations Expense</i>
	6560.1	Depreciation Expense.
	6560.2	Amortization Expense.
		<i>Operating Taxes</i>
	7200.1	Operating Investment Tax Credits—Net.
	7200.2	Operating Federal Income Taxes.
	7200.3	Operating State and Local Income Taxes.
7240.1	7200.41	Operating Taxes—Property.
7240.2	7200.42	Operating Taxes—Miscellaneous.
	7200.5	Provision for Deferred Operating Income Taxes—Net.
		<i>Nonoperating Income and Expense</i>
	7300.2	Interest Income.
	7300.4	Allowance for Funds Used During Construction.
	7300.6	Other Nonoperating Income and Expense

Class of Company (Account Number)		Account Title
A	B	
		<i>Nonoperating Taxes</i>
	7400.1	Nonoperating Investment Tax Credits—Net.
	7400.2	Nonoperating Federal Income Taxes.
	7400.3	Nonoperating State and Local Income Taxes.
	7400.4	Nonoperating Other Taxes.
	7400.5	Provision for Deferred Nonoperating Income Taxes—Net.
		<i>Extraordinary Items</i>
	7600.1	Extraordinary Income Credits.
	7600.2	Extraordinary Income Charges.
	7600.3	Current Income Tax Effect of Extraordinary Items—Net.
	7600.4	Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
1130.1	1120.11	<i>Cash—General Fund:</i> This account shall include all unrestricted funds derived from revenues and other sources which are on deposit in banks or other financial institutions and available on demand. It shall also include funds in transit to the depository for which customers and agents have received credit on their accounts. Separate subaccounts should be maintained for each bank account in which general fund cash is deposited.
1130.2	1120.12	<i>Cash—Construction Fund Trustee:</i> This account shall include all loan funds received from REA, the Rural Telephone Bank, the Federal Financing Bank, and all non-loan funds supplied by the borrower under the terms of the loan contract or otherwise required by REA. The offsetting credit for funds received from REA shall be to Account 4210.20, REA Notes—Unadvanced, Dr.; funds received from the Rural Telephone Bank, to Account 4210.21, Telephone Bank Notes—Unadvanced, Dr.; funds received from the Federal Financing Bank, to Account 4210.22, Federal Financing Bank Notes—Unadvanced, Dr.; funds received from the Bank for Cooperative, to Account 4210.23, Bank for Cooperatives Notes—Unadvanced, Dr.; and funds received from the Rural Telephone Finance Cooperative, to Account 4210.24, Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.
1130.3	1120.13	<i>Cash—Transfer of Funds:</i> This account shall include all transfers of funds from one bank account to another. This account shall be charged with the amount of a check drawn for the transfer, and credited when the amount transferred is entered into the Cash Receipts Book.
	1120.21	<i>Special Cash Deposits:</i> This account shall include all cash on special deposit, other than in sinking and other special funds provided for elsewhere, to pay dividends, interest, and other debts, when such payments are due one year or less from the date of deposit; the amount of cash deposited to insure the performance of contracts to be performed within one year from the date of the deposit; and other cash deposits of a special nature not provided for elsewhere. This account shall include the amount of cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced, and also cash realized from the sale of the company's securities and deposited with trustees to be held until invested in physical property of the company or for disbursement when the purposes for which the securities were sold are accomplished.
1150.1	1120.31	<i>Petty Cash Fund:</i> This account shall include funds in the custody of employees or agents for making minor disbursements. The fund shall be operated on an imprest basis. Expenditures shall be supported by receipts, and reimbursements to the fund shall be for the exact amount of such expenditures and shall be charged to the various accounts to which the expenditures are allocable. At all times, the total of the cash on hand and the unreimbursed expenditures shall equal the amount of the fund.
1150.2	1120.32	<i>Change Fund:</i> This account shall include funds in the custody of employees or agents for making change. Records shall be kept of the amount held by each person. Disbursements shall not be made from the fund.
1220.1	1220.1	<i>Materials and Supplies:</i> This account shall include the cost of materials and supplies held in stock including plant supplies, motor vehicles supplies, tools, fuel, other supplies and material and articles of the company in process of manufacture for supply stock.
		Transportation charges and sales and use taxes, as far as practicable, shall be included as a part of the cost of the particular material to which they relate. Transportation and sales and use taxes which are not included as part of the cost of particular material shall be equitably apportioned among the accounts to which material is charged.
		As far as practicable, cash and other discounts on material shall be deducted in determining cost of the particular material to which they relate or credited to the account to which the material is charged. When such deduction is not practicable, discounts shall be equitably apportioned among the accounts to which material is charged.
		Material recovered in connection with construction, maintenance or retirement of property shall be charged to this account as follows:
		Reusable items that, when installed or in service, were retirement units shall be included in this account at the original cost.
		Reusable minor items that, when installed or in service, were not retirement units shall be included in this account at current prices new.
		The cost of repairing reusable material shall be charged to the appropriate Plant Specific Operations Expense accounts.
		Scrap and nonusable material included in this account shall be carried at the estimated amount which will be received therefor. The difference between the amounts realized for scrap and nonusable material sold, and the amounts at which it is carried in this account shall be adjusted in the accounts credited when the material was taken up in this account.
		Interest paid on material bills, the payments of which are delayed, shall be charged to Account 7540. Other Interest Deductions.
		Inventories of materials and supplies shall be taken during each calendar year and the adjustments to this account shall be charged or credited to Account 6512, Provisioning Expense.
1220.2	1220.2	<i>Property Held for Sale or Lease:</i> This account shall include the cost of all items purchased for resale or lease. The cost shall include applicable transportation charges, sales and use taxes, and cash and other purchase discounts. Inventory shortages and overages shall be charged and credited, respectively to Account 7991. Other Nonregulated Revenues.
1220.3	1220.3	<i>Exempt Materials-Clearing:</i> This account shall include the cost of materials and supplies designated as exempt material on the carrier's "Exempt Material List". Charges to this account shall be cleared monthly to the primary plant and maintenance accounts in accordance with percentages developed by the individual carriers.
		When there is a substantial amount of exempt material on hand at the end of the year, substantial enough to distort net income or margins, a physical inventory may be taken. The cost of the inventory on hand shall be debited to this account and credited to the appropriate primary plant and maintenance accounts on a pro-rata basis related to the original charges to these accounts. This entry shall be reversed at the first of the year.
	1280.1	<i>Prepaid Rents:</i> This account shall include the amount of rents paid in advance of the period in which it is chargeable to income, except amounts chargeable to the telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the rents are paid, this account shall be credited monthly and the appropriate account charged.

Class of Company (Account Number)		Account Title
A	B	
	1280.2	<i>Prepaid Taxes:</i> This account shall include the balance of all taxes paid in advance of the period in which they are chargeable to income, except amounts chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the taxes are paid, this account shall be credited monthly and the appropriate account charged.
	1280.3	<i>Prepaid Insurance:</i> This account shall include the amount of insurance premiums paid in advance of the period in which they are chargeable to income, except premiums chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the premiums are paid, this account shall be credited monthly and the appropriate account charged.
	1280.4	<i>Prepaid Directory Expenses:</i> This account shall include the cost of preparing, printing, binding, and delivering directories and the costs of soliciting advertisements for directories, except minor amounts which may be charged directly to Account 6622, Number Services. Amounts in this account shall be cleared to Account 6622 by monthly charges representing that portion of the expenses applicable to each month.
	1280.5	<i>Other Prepayments:</i> This account shall include prepayments, other than those includable in Accounts 1280.1 through 1280.4 except minor amounts which may be charged directly to the final accounts. As the term expires for which the payments apply, this account shall be credited monthly and the appropriate account charged.
1402.1	1402.1	<i>Investments in Nonaffiliated Companies—Class B RTB Stock:</i> This account shall include the par value of the required purchase of Class B Rural Telephone Bank Stock and the par value of the Class B Rural Telephone Bank stock received as a patronage refund. This account shall be debited at the time the refund is received and Account 1402.11, Investments in Nonaffiliated Companies—Class B RTB Stock—Cr., credited.
		This account shall be credited an Account 1402.11 debited when the patronage refund is redeemed.
1402.11	1402.11	<i>Investment in Nonaffiliated Companies—Class B RTB Stock—Cr:</i> This account shall include the par value of Class B Rural Telephone Bank stock received as a patronage refund. This account shall be debited at the time the refund is received and Account 1402.11, Investments in Nonaffiliated Companies—Class B RTB Stock—Cr., credited.
		This account shall be debited and Account 1402.1 credited when the patronage refund is redeemed.
1402.11	1402.11	<i>Investments in Nonaffiliated Companies—Class B RTB Stock B RTB Stock—Cr:</i> This account shall include the par value of the Class B Rural Telephone Bank stock received as a patronage refund. This account shall be credited at the time the refund is received and Account 1402.1, Investments in Nonaffiliated Companies—Class B RTB Stock, debited.
		This account shall be debited and Account 1402.1 credited when the patronage refund is redeemed.
1402.2	1402.2	<i>Investments in Nonaffiliated Companies—Class C RTB Stock:</i> This account shall include the par value of the company's investment in Class C Rural Telephone Bank Stock. Cash dividends on Class C stock shall be recorded in Account 7310, Dividend Income, when declared.
1402.3	1402.3	<i>Other Investments in Nonaffiliated Companies:</i> This account shall include the acquisition cost of the company's investment in securities issued by non-affiliated companies, other than securities held in special funds which shall be charged to Account 1408, Sinking Funds, and also its investment advances to such parties and special deposits of cash for more than one year from the date of deposit.
		Declines in value of investments shall be charged to Account 4540.41, Other Capital, if temporary and as a current period loss if permanent. Detail records shall be maintained to reflect unrealized losses for each investment.
2001.1	2001.1	<i>Telecommunications Plant in Service—Classified:</i> This account shall include the original cost of the property capitalized in Accounts 2110 through 2690.
2001.2	2001.2	<i>Telecommunications Plant in Service—Unclassified:</i> This account shall include the original cost of telecommunications property which has been completed and placed in service but which has not been completed and placed in service but which has not been classified pending completion of final inventories of construction, final cost summaries, etc. The balance in this account is subject to depreciation charges.
2003.1	2003.1	<i>Telecommunications Plant Under Construction—Short Term—Contract:</i> This account shall include all costs incurred in the construction of telecommunications plant performed under contract and designed to be completed in one year or less. Included among these costs are contractor payments, and charges of engineering, supervision, taxes, insurance, transportation, and other costs incurred in contract construction. This account shall be maintained such that the various items of cost are readily identified.
2003.2	2003.2	<i>Telecommunications Plant Under Construction—Short Term—Force Account:</i> This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and designed to be completed in one year or less. Included among these costs are charges for material, labor, engineering, supervision, taxes, insurance, transportation, supply expense, and other costs incurred in the construction. This account shall be maintained so that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.
2003.3	2003.3	<i>Telecommunications Plant Under Construction—Short Term—Work Orders:</i> This account shall include all costs incurred in the construction of telecommunications plant performed under a work order system or a line extension contract and designed to be completed in one year or less. This type of construction generally includes service installations, subscriber extensions, and minor plant improvements after the completion of the initial system. Included among these costs are charges for labor, materials and supplies, transportation, payroll taxes, insurance, supervision and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of individual jobs. These records shall be reconciled periodically with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
2004.1	2004.1	<i>Telecommunications Plant Under Construction—Long Term—Contract:</i> This account shall include all costs incurred in the construction of telecommunications plant performed under contract and designed to be completed in more than one year. Included among these costs are contractor payments, and charges for engineering, supervision, taxes, insurance, transportation, interest during construction, and other costs incurred in contract construction. This account shall be maintained such that the various items of cost are readily identified.
2004.2	2004.2	<i>Telecommunications Plant Under Construction—Long Term—Force Account:</i> This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and designed to be completed in more than one year. Included among these costs are charges for material, labor, engineering, supervision, taxes, insurance, transportation, supply expenses, interest during construction, and other costs incurred in the construction. This account shall be maintained such that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.

Class of Company (Account Number)		Account Title
A	B	
2004.3	2004.3	<i>Telecommunications Plant Under Construction—Long Term—Work Orders:</i> This account shall include all costs incurred in the construction of telecommunications plant performed under a work order system or a line extension contract and designed to be completed in more than one year. Included among these costs are charges for labor, materials and supplies, transportation, payroll taxes, insurance, supervision, interest during construction, and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of individual jobs. These records shall be reconciled periodically with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
	22*0.11	<i>Central Office Switching—Analog:</i> This account shall include the original cost of stored program control analog circuit-switching and associated equipment. This account shall also include the cost of remote analog electronic circuit switches.
	2210.21	<i>Central Office Switching—Digital:</i> ¹ This account shall include the original cost of stored program control digital switches and their associated equipment. Included in this account are digital switches which utilize either dedicated or non-dedicated circuits. This account shall also include the cost of remote digital electronic switches.
	2210.31	<i>Central Office Switching—Electro-Mechanical—Step-by-Step:</i> ¹ This account shall include the original costs of step-by-step and associated circuit-switching equipment.
	2210.32	<i>Central Office Switching—Electro-Mechanical—Crossbar:</i> ¹ This account shall include the original cost of crossbar and associated circuit switching equipment. Also included in this account is the cost of electronic translator system equipment used in switching.
	2210.33	<i>Central Office Switching—Electro-Mechanical—Other:</i> ¹ This account shall include the original cost of all other types of non-electronic circuit-switching equipment such as panel systems and their associated circuit-switching equipment.
	2230.11	<i>Central Office Transmission—Radio Systems—Satellite and Earth Station Facilities:</i> This account shall include the original cost of an ownership interest in satellites (including land-side spares), other spare parts, materials, and supplies. It shall include launch insurance and other satellite launch costs. This account shall also include the original cost of earth stations and spare parts, materials, and supplies therefor.
	2230.12	<i>Central Office Transmission—Radio Systems—Other:</i> This account shall include the original cost of radio equipment used to provide radio communication channels. Radio equipment is that equipment which is used for the generation, amplification, propagation, reception, modulation, and demodulation of radio waves in free space over which communications channels can be provided. This account shall also include the associated carrier and auxiliary equipment.
	2230.21	<i>Central Office Transmission—Circuit Equipment:</i> This account shall include the original cost of equipment which is used to reduce the number of physical pairs otherwise required to serve a given number of subscribers by utilizing carrier systems, concentration stages or combinations of both. It shall include equipment that provides for simultaneous use of a number of interoffice channels on single transmission path. This account shall also include equipment which is used for the amplification, modulation, regeneration, circuit patching, balancing or control of signals transmitted over interoffice communications transmission channels. This account shall include equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels. This account shall also include the original cost of associated material used in the construction of such plant. Circuit equipment may be located in central offices, in manholes, on poles, in cabinets or huts or at other locations. This account excludes carrier and auxiliary equipment and patch bay which are recorded in Account 2230.12, Central Office Transmission—Radio Systems—Other.
3100x	3100x	<i>Retirement Work in Progress:</i> This account shall be charged with the original cost of property retired from the telecommunications plant accounts. It shall also be charged with all of the costs incurred in removing the retired plant from service. This account shall be credited with the salvage value of materials recovered in the retirement of the telecommunications plant. At such time as the retirement work order is complete, the net income/loss resulting therefrom shall be transferred from this account to the appropriate primary plant depreciation reserve account.
4010.11	4010.11	<i>Accounts Payable to Affiliated Companies:</i> This account shall include all amounts currently due to affiliated companies for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, material and supplies, repairs to telecommunications plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts.
4010.21	4010.21	<i>Accounts Payable to Nonaffiliated Companies:</i> This account shall include all amounts currently due to nonaffiliated companies for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, materials and supplies, repairs to telecommunications plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts.
4010.22	4010.22	<i>Accounts Payable—Employees' Income Tax Withheld:</i> This account shall include income taxes payable that have been withheld from employees' salaries.
4010.23	4010.23	<i>Accounts Payable—FICA Taxes Withheld:</i> This account shall include FICA taxes payable that have been withheld from employees' salaries.
4010.24	4010.24	<i>Accounts Payable—Federal Excise Taxes:</i> This account shall include excise taxes payable.
4010.25	4010.25	<i>Accounts Payable—Payroll:</i> This account shall include amounts payable to the company's employees in the form of salaries or wages.
4070.1	4070.1	<i>Income Taxes Accrued—Federal:</i> For Class A companies, this account shall be credited and Accounts 7220, 7420, and 7630, as appropriate, shall be debited for the amount of federal income taxes accrued during the current operating period. For Class B companies, this account shall be credited and Accounts 7200.2, 7400.2, and 7600.3, as appropriate, shall be debited for the amount of federal income taxes accrued during the current operating period.
	4070.2	<i>Income Taxes Accrued—State and Local:</i> For Class A companies, this account shall be credited and Accounts 7230, 7430, and 7630, as appropriate, shall be debited for the amount of state and local income taxes accrued during the current operating period. For Class B companies, this account shall be credited and Accounts 7200.3, 7400.3, and 7600.3, as appropriate, shall be debited for the amount of state and local income taxes accrued during the current operating period.
4080.1	4080.1	<i>Other Taxes Accrued—Property:</i> This account shall be credited and Account 7240.1/7200.41, Operating Taxes—Property, shall be debited for the amount of property taxes accrued during the current operating period.
4080.2	4080.2	<i>Other Taxes Accrued—Employer's Portion—FICA:</i> This account shall be credited and the appropriate construction, depreciation, or expense account shall be debited for the employer's portion of FICA taxes accrued during the current operating period.
4080.3	4080.3	<i>Other Taxes Accrued—Federal Unemployment:</i> This account shall be credited and the appropriate construction, removal, or expense account shall be debited for the amount of federal unemployment taxes accrued during the current operating period.
4080.4	4080.4	<i>Other Taxes Accrued—State Unemployment:</i> This account shall be credited and the appropriate construction, removal, or expense account shall be debited for the amount of state unemployment taxes accrued during the current operating period.

Class of Company (Account Number)		Account Title
A	B	
4080.5	4080.5	<i>Other Taxes Accrued—Miscellaneous:</i> This account shall be credited and Account 7240.2/7200.42, Operating Taxes—Miscellaneous, shall be debited for the amount of all other taxes accrued during the current operating period and not provided for elsewhere such as a gross receipts tax, franchise taxes, and capital stock taxes.
4120.1	4120.1	<i>Unmatured Interest Accrued—REA Notes:</i> This account shall include the interest accrued as of the balance sheet date but not payable until after that date on REA mortgage notes.
4120.2	4120.2	Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.3	4120.3	<i>Unmatured Interest Accrued—Telephone Bank Notes:</i> This account shall include the interest accrued as of the balance sheet date but not payable until after that date on Rural Telephone Bank mortgage notes.
4120.3	4120.3	Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.11	4120.11	<i>Other Accrued Liabilities:</i> This account shall include the amount of wages, compensated absences, interest on indebtedness of the company, dividends on capital stock, and rents accrued as of the balance sheet date but not payable until after that date.
4120.11	4120.11	This account shall not include interest accrued on REA or Rural Telephone Bank debt.
4120.12	4120.12	<i>Funded Debt—Other:</i> This account shall include the total face amount of unmatured debt, maturing more than one year from the date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement.
4120.12	4120.12	This account shall not include unmatured REA, Rural Telephone Bank, Federal Financing Bank, Bank for Cooperatives, or Rural Telephone Finance Cooperative debt.
4120.13	4120.13	<i>REA Notes:</i> This account shall include the total face amount of unmatured REA mortgage notes. Account 4210.20, REA Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes.
4120.13	4120.13	If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4120.14	4120.14	<i>Telephone Bank Notes:</i> This account shall include the total face amount of unmatured Rural Telephone Bank mortgage notes. Account 4210.21, Telephone Bank Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes.
4120.14	4120.14	If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4120.15	4120.15	<i>Federal Financing Bank Notes:</i> This account shall include the total face amount of unmatured Federal Financing Bank mortgage notes. Account 4210.22, Federal Financing Bank Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes.
4120.15	4120.15	If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4120.16	4120.16	<i>Bank for Cooperatives Notes:</i> This account shall include the total face amount of unmatured Bank for Cooperatives mortgage notes. Account 4210.23, Bank for Cooperatives Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes.
4120.16	4120.16	If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4120.17	4120.17	<i>Rural Telephone Finance Cooperative Notes:</i> This account shall include the total face amount of unmatured Rural Telephone Finance Cooperative mortgage notes. Account 4210.24, Rural Telephone Finance Cooperative Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes.
4120.17	4120.17	If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4120.18	4120.18	<i>REA Notes—Deferred Interest:</i> This account shall include interest accrued on REA mortgage notes, the payment of which has been deferred in accordance with the terms of the notes or extension agreements. The offsetting charge shall be to Account 7510, Interest on Funded Debt, for Class A companies and Account 7500, Interest and Related Items, for Class B companies.
4120.18	4120.18	If interest payments are not made at the due date, this account shall be debited and Account 4010.21, Accounts Payable to Nonaffiliated Companies, credited with the amount of the matured interest.
4120.19	4120.19	<i>REA Notes—Advance Payments, Dr.:</i> This account shall include all payments on REA mortgage notes made in advance of the due date and not applied to a specific quarterly payment. As these payments are applied to specific notes, this account shall be credited and the long-term debt and interest liability accounts debited.
4120.20	4120.20	<i>Funded Debt—Other—Unadvanced, Dr.:</i> This account shall include the total face amount of notes executed to others, for which funds have not been received.
4120.20	4120.20	This account shall be credited and Account 1130.1/1120.11, Cash—General Funds, debited when funds are received from the lender.
4120.21	4120.21	<i>REA Notes—Unadvanced, Dr.:</i> This account shall include the total face amount of REA mortgage notes for which funds have not been received.
4120.21	4120.21	This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received from REA.
4120.22	4120.22	<i>Telephone Bank Notes—Unadvanced, Dr.:</i> This account shall include the total face amount of Rural Telephone mortgage notes for which funds have not been received.
4120.22	4120.22	This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received from the Rural Telephone Bank.
4120.23	4120.23	<i>Federal Financing Bank Notes—Unadvanced, Dr.:</i> This account shall include the total face amount of Federal Financing Bank mortgage notes for which funds have not been received.
4120.23	4120.23	This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received.
4120.24	4120.24	<i>Bank for Cooperatives Notes—Unadvanced, Dr.:</i> This account shall include the total face amount of Bank for Cooperatives mortgage notes for which funds have not been received.
4120.24	4120.24	This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received.
4120.24	4120.24	<i>Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.:</i> This account shall include the total face amount of Rural Telephone Finance Cooperative mortgage notes for which funds have not been received.
4120.24	4120.24	This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received.

Class of Company (Account Number)		Account Title
A	B	
4540.11	4540.11	<i>Capital Stock Subscribed:</i> This account shall include the par value of capital stock for which legally enforceable subscriptions have been received but for which, at the date of the balance sheet, stock certificates have not been issued. This account shall be debited and Account 4510, Capital Stock, credited when a subscriber has paid the subscription in full and stock certificates are issued.
4540.12	4540.12	<i>Memberships Subscribed but Unissued:</i> This account shall include the face amount of memberships subscribed but not issued. This account shall be credited at the time the subscription is received and Account 1350.2, Subscriptions to Memberships, debited. This account shall be debited and Account 4540.21, Memberships Issued, credited when a subscriber has paid the subscription in full and the membership certificates are issued.
4540.13	4540.13	<i>Members' Equity Certificates Subscribed but Unissued:</i> This account shall include the face amount of members' equity certificates subscribed but not issued. This account shall be credited at the time the subscription is received and Account 1350.3, Subscriptions to Members' Equity Certificates, debited. This account shall be debited and Account 4540.22, Members' Equity Certificates Issued, credited when a subscriber has paid the subscription in full and the certificates are issued.
4540.21	4540.21	<i>Memberships Issued:</i> This account shall include the face amount of membership certificates outstanding. A subsidiary membership record shall be maintained to reflect the detail of the balance in this account.
4540.22	4540.22	<i>Members' Equity Certificates Issued:</i> This account shall include the face amount of members' equity certificates outstanding. A subsidiary members' equity certificate record shall be maintained to reflect the detail of the balance in this account.
4540.23	4540.23	<i>Members' Equity—Other:</i> This account shall include credit amounts arising from donations, forfeitures of membership fees, forgiveness of debts of the cooperative, and member's equities not otherwise provided for.
4540.31	4540.31	<i>Installments Paid on Capital Stock:</i> This account shall include the amount of installments paid on capital stock on a partial or installment payment plan by subscribers against whom there is no legally enforceable subscription contract, and who are entitled to be reimbursed the principal amount of their payments, with or without interest, in the event they fail to complete payment for the stock and receive certificates therefor. This account shall be debited and Account 4510, Capital Stock, credited with the par value of capital stock when the total subscription is received and the stock certificates are issued. Any difference between the purchase price of the subscription and the par value of the stock shall be credited to Account 4520, Additional Paid-In Capital. A subsidiary ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
4540.32	4540.32	<i>Installments Paid on Membership Subscribed:</i> This account shall include the amount of installments paid by prospective members on membership subscriptions against whom there is no legally enforceable subscription contract, and who are entitled to be reimbursed for the principal amount of their payments, with or without interest, in the event they fail to complete payment for the membership and receive certificates therefor. This account shall be debited and Account 4540.21, Memberships, Issued, credited with the face amount of the membership when the total subscription is received and the membership certificates are issued. A subsidiary ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
4540.33	4540.33	<i>Installments Paid on Equity Certificates Subscribed:</i> This account shall include the amount of installments paid by prospective members on equity certificate subscription against whom there is no legally enforceable subscription contract, and who are entitled to be reimbursed for the principal amount of their payments, with or without interest, in the event they fail to complete payment for the membership and receive equity certificates therefor. This account shall be debited and Account 4540.22, Members' Equity Certificates Issued, credited with the face amount of the memberships when the total subscription is received and the equity certificates are issued. A subsidiary ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
4540.41	4540.41	<i>Other Capital:</i> This account shall include amounts which are credits arising from capital recorded upon the reorganization or recapitalization of the company and temporary declines in the value of marketable securities held for investment purposes.
4550.1	4550.1	<i>Operating Margins:</i> This account shall include amounts received or receivable from the furnishing of telecommunications service in excess of costs incurred in the furnishing of such service. If costs exceed revenues, the excess cost of furnishing telecommunications service shall be recorded as a debit to this account.
4550.2	4550.2	<i>Nonoperating Margins:</i> This account shall include margins arising from transactions or activities not related to the furnishing of telecommunications service. Included in this account are receipts from investments, income from investments, income from nonoperating plant, and revenues derived from services performed for others incident to the company's regulated telecommunications operations.
4550.3	4550.3	<i>Other Margins:</i> This account shall include patronage capital credits assigned to the cooperative by other nonprofit organizations prior to January 1, 1970, which were not credited directly to an operating expense account as a reduction in the cost of furnishing telecommunications service.
	xl	No entries shall be made to this account unless it is to distribute or eliminate prior balances in conformance with the bylaws of the cooperative.
4550.4	4550.4	<i>Patronage Capital Assignable:</i> This account shall include all amounts transferred from operating margins, nonoperating margins, and other margin accounts which are assignable to individual patrons.
4550.5	4550.5	<i>Patrons' Capital Credits Assigned:</i> This account shall include the amounts of patronage capital which have been credited to individual patrons. A subsidiary patronage capital ledger shall be maintained so as to reflect the amount of capital furnished by each patron and the amount of such capital returned to the patron.
4550.6	4550.6	<i>Gain on the Retirement of Capital Credits:</i> This account shall include credits resulting from the retirement of patronage capital through settlement of individual patrons' accounts at less than 100 percent of the capital assigned to the patron. The portion of patronage capital not returned to patrons under such settlements shall be debited to Account 4550.5, Patrons' Capital Credits Assigned, and credited to this account. This account shall also include amounts representing patronage capital authorized to be retired to patrons who cannot be located. Returned checks issued for retirements of patronage capital, after an appropriate waiting period, shall be credited to this account and a record shall be maintained adequate to enable the cooperative to make payment to the patron if and when a claim has been established by the patron.
	6210.11	<i>Analog Electronic Expense:</i> This account shall include expenses associated with analog electronic switching.
	6210.21	<i>Digital Electronic Expense:</i> This account shall include expenses associated with digital electronic switching.
	6210.31	<i>Electro-Mechanical Expense:</i> This account shall include expenses associated with electro-mechanical switching.
	6230.11	<i>Radio Systems Expense:</i> This account shall include expenses associated with radio systems.
	6230.21	<i>Circuit Equipment Expense:</i> This account shall include expenses associated with circuit equipment.

Class of Company (Account Number)		Account Title
A	B	
	6560.1	<i>Depreciation Expense:</i> This account shall include the depreciation expense associated with telecommunications plant in service (Account 2112 through 2441) and property held for future telecommunications use.
	6560.2	<i>Amortization Expense:</i> This account shall include the amortization expense associated with capital leases and leasehold improvements (Accounts 2681 and 2682), intangibles (Account 2690), and telecommunications plant adjustments (Account 2005).
	7200.1	<i>Operating Investment Tax Credits—Net:</i> This account shall be charged and Account 4320, Unamortized Operating Investment Tax Credits—Net, shall be credited with investment tax credits generated from qualified expenditures related to regulated operations which the company defers rather than recognizes currently in income. This account shall be credited and Account 4320 shall be charged ratably with the amortization of each year's investment tax credits included in Account 4320 for investment services for ratemaking purposes. Such amortization shall be determined in relation to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.
	7200.2	<i>Operating Federal Income Taxes:</i> This account shall be charged and Account 4070.1, Income Taxes Accrued—Federal, shall be credited for the amount of federal income tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
	7200.3	<i>Operating State and Local Income Taxes:</i> This account shall be charged and Account 4070.2, Income Taxes Accrued—State and Local, credited for the amount of state and local income tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
7240.1	7200.41	<i>Operating Taxes—Property:</i> This account shall be charged and Account 4080.1, Other Taxes Accrued—Property, shall be credited for the amount of property tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
7240.2	7200.42	<i>Operating Taxes—Miscellaneous:</i> This account shall be charged and Account 4080.5, Other Taxes Accrued—Miscellaneous, shall be credited for the amount of all other taxes accrued during the current operating period and not provided for elsewhere such as gross receipts, franchise, and capital stock tax expense incurred in the current operating period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes should be accrued each month on an estimated basis and adjustments made as later data becomes available.
	7200.5	<i>Provision for Deferred Operating Income Taxes—Net:</i> This account shall be charged or credited, as appropriate, with contra entries recorded in either Account 4100, Net Current Deferred Operating Income Taxes, or Account 4340, Net Noncurrent Deferred Operating Income Taxes, as appropriate, for income tax expense that has been deferred. Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state, and local income taxes.
	7300.2	<i>Interest Income:</i> This account shall include interest on securities, including notes and other evidences of indebtedness, which are the property of the company, whether such securities are owned by the company and held in its treasury, or deposited in trust (except in sinking or other funds) or otherwise controlled. It shall also include interest on bank balances, certificates of deposits, open accounts, and other analogous items. There shall be included in this account for each month, the applicable amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the difference between the purchase price and the par value of securities owned, the income from which is includable in this account. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried. Any such difference remaining unextinguished at the sale or upon the maturity and satisfaction of such securities shall be cleared to Account 7300.3 Other Nonoperating Income and Expense.
	7300.4	<i>Allowance for Funds Used During Construction:</i> This account shall be credited with such amounts as are charged to the telecommunications plant accounts for the purpose of recording an allowance for funds used for construction purposes.
	7300.6	<i>Other Nonoperating Income and Expense:</i> This account shall include all other items of income and gains or losses from activities not specifically provided for elsewhere such as dividend income; income from sinking funds; gains or losses from the disposition of land or artworks, plant with traffic, temporary cash investments or marketable equity securities, and nonoperating telecommunications plant not previously used in the provision of telecommunications services; fees collected in connection with the exchange of coupon bonds for registered bonds; uncollectible amounts previously credited to this account; gains or losses from the extinguishment of debt made to satisfy sinking fund requirements; gains or losses arising from the exchange or translation of foreign currency; net unrealized losses on investments in current marketable equity securities; write-downs or write-offs of the book costs of investments in equity securities due to permanent impairment; amortization of goodwill; the company's share of earnings or losses of affiliated companies accounted for on the equity method; and the net balance of the revenue from and the expenses of property, plant, and equipment, the cost of which is includable in Account 2006, Nonoperating Plant.
	7400.1	<i>Nonoperating Investment Tax Credits—Net:</i> This account shall be charged and Account 4330, Unamortized Nonoperating Investment Tax Credits—Net, shall be credited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income. This account shall be credited and Account 4330 shall be charged with the amortization of each year's investment tax credits included in such accounts relating to amortization of previously deferred investment tax credits of other property or regulated property, the amortization of which does not serve to reduce costs of service (but the unamortized balance does reduce rate base) for ratemaking purposes. Such amortization shall be determined with reference to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.
	7400.2	<i>Nonoperating Federal Income Taxes:</i> This account shall be charged and Account 4070, Income Taxes—Accrued, shall be credited for the amount of nonoperating Federal income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. Companies that adopt the flowthrough method of accounting for investment tax credits shall reduce the calculated provision in this account by the entire amount of the credit realized during the year. Tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits. No entries shall be made to this account to reflect interperiod tax allocation.
	7400.3	<i>Nonoperating State and Local Income Taxes:</i> This account shall be charged and Account 4070, Income Taxes—Accrued, shall be credited for the amount of state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. No entries shall be made to this account to reflect interperiod tax allocation.

Class of Company (Account Number)		Account Title
A	B	
	7400.4	<i>Nonoperating Other Taxes:</i> This account shall be charged and Account 4080, Other Taxes—Accrued, shall be credited for all nonoperating taxes, other than Federal, state, and local income taxes, and payroll related taxes for the current period. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes. This account shall also reflect subsequent adjustments to amounts previously charged.
	7400.5	<i>Provision for Deferred Nonoperating Income Taxes—Net:</i> This account shall be charged or credited, as appropriate, with contra entries recorded in either Account 4110, Net Current Deferred Nonoperating Income Taxes, or Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes, as appropriate, for nonoperating tax expenses that have been deferred. Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state, and local income taxes.
	7600.1	<i>Extraordinary Income Credit:</i> This account shall be credited with nontypical, noncustomary, and infrequently recurring gains which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630/7600.3, Current Income Tax Effect for Extraordinary Items—Net and Account 7640/7600.4, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
	7600.2	<i>Extraordinary Income Charges:</i> This account shall be debited with nontypical, non-customary, and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630/7600.3, Current Income Tax Effect for Extraordinary Items—Net, and Account 7640/7600.4, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
	7600.3	<i>Current Income Tax Effect of Extraordinary Items—Net:</i> This account shall be charged or credited and Account 4070, Income Taxes—Accrued, shall be credited or charged for all current income tax effect (Federal, state, and local) of items included in Account 7610/7600.1, Extraordinary Income Credits, and Account 7620/7600.2, Extraordinary Income Charges.
	7600.4	<i>Provision for Deferred Income Tax Effect of Extraordinary Items—Net:</i> This account shall be charged or credited as appropriate, with a contra amount recorded in Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes, for the income tax effects (Federal, state, and local) of items included in Account 7610/7600.1, Extraordinary Income Credits, and Account 7620/7600.2, Extraordinary Income Charges, that have been deferred.

* These accounts shall not include items which are related to a nonregulated activity unless that activity involves joint or common use of assets and resources in the provision of regulated and nonregulated products and services;

¹ Switching plants excludes switchboards which perform operator assistance functions and equipment which is an integral part thereof. It does not exclude equipment used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic, dial tandem switchboards, and special service switchboards used in conjunction with private line service; such equipment shall be classified to the particular switch that it serves.

§ 1770.16 Supplementary Accounts Required of Nonprofit Organizations.

Class of Company (Account Number)		Account Title
A	B	
		CURRENT ASSETS
1350.1	1350.1	Subscriptions to Capital Stock.
1350.2	1350.2	Subscriptions to Memberships.
1350.3	1350.3	Subscriptions to Members' Equity Certificates.
1350.4	1350.4	Other Current Assets.
		CURRENT LIABILITIES
4130.1	41350.1	Patronage Capital Payable.
4130.2	41350.2	Other Current Liabilities.
		LONG-TERM DEBT
4270.1	4270.1	Members' Redeemable Equity Certificates Subscribed but Unissued.
4270.2	4270.2	Members' Redeemable Equity Certificates Issued.
4270.3	4270.3	Other Long-Term Debt.
1350.1	1350.1	<i>Subscriptions to Capital Stock:</i> This account shall include the balance due from subscribers upon legally enforceable subscriptions to capital stock. The purchase price of subscriptions shall be charged to this account at the time the subscription is received. The par value of the stock subscribed shall be credited to Account 4540.11, Capital Stock Subscribed, and the difference between the purchase price and the par value shall be credited to Account 4520, Additional Paid-In Capital.
1350.2	1350.2	<i>Subscriptions to Membership:</i> This account shall include the balance due on memberships subscribed. The face amount of memberships subscribed shall be charged to this account at the time the subscription is received. The offsetting credit shall be to Account 4540.12, Memberships Subscribed but Unissued. A subscription ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
1350.3	1350.3	<i>Subscriptions to Members' Equity Certificates:</i> This account shall include the balance due on member's equity certificates subscribed. The face amount of certificates subscribed shall be charged to this account at the time the subscription is received. The offsetting credit shall be to Account 4540.13, Member's Equity Certificates Subscribed but Unissued, or to Account 4270.1, members' Redeemable Equity Certificates Subscribed but Unissued. A subscription ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger. The subscription ledger shall be maintained in such a manner as to separately identify redeemable and nonredeemable certificates.
1350.4	1350.4	<i>Other Current Assets:</i> This account shall include the amount of all current assets which are not includable in Accounts 1120 through 1350.3.
4130.1	4130.1	<i>Patronage Capital Payable:</i> This account shall include the amount of patronage capital which has been authorized to be returned to patrons.
4130.2	4130.2	<i>Other Current Liabilities:</i> This account shall include liabilities of current character which are not includable in Accounts 4010 through 4130.1.

Class of Company (Account Number)		Account Title
A	B	
4270.1	4270.1	<i>Members' Redeemable Equity Certificates Subscribed but Unissued:</i> This account shall include the face amount of members' equity certificates which are redeemable at some specified future date for which subscriptions have been received but for which certificates have not been issued. This account shall be credited at the time the subscription is received and Account 1350.3, Subscriptions to Members' Equity Certificates, debited.
4270.2	4270.2	This account shall be debited and Account 4270.2, Members' Redeemable Equity Certificates Issued, credited when a subscriber has paid the subscription in full and the equity certificates are issued.
4270.3	4270.3	<i>Members' Redeemable Equity Certificates Issued:</i> This account shall include the face amount of outstanding members' equity certificates which are redeemable at some specified future date. A subsidiary members' redeemable equity certificate record shall be maintained to reflect the detail of the balance in this account.
		<i>Other Long-Term Debt:</i> This account shall include long-term debt not provided for elsewhere.

Dated: June 28, 1988.

Harold V. Hunter,
Administrator.

[FR Doc. 88-27362 Filed 11-28-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-164-AD]

Airworthiness Directives: CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which would require modification of the bellcrank-to-control rod joints in the wing flap control system. This proposal is prompted by reports that failed bolts, lacking positive retention, may separate from the flap linkage. This condition, if not corrected, could lead to failure of the flap control system and asymmetric flap retraction.

DATES: Comments must be received no later than January 23, 1989.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-164-AD 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas S.A. Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the

Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Général de Aviacion Civil (DGAC), which is the airworthiness authority of Spain, in accordance with

existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist in the wing flap control system on CASA C-212 series airplanes. The manufacturer has reported that failed bolts, lacking positive retention may separate from the flap linkage. The manufacturer has determined that additional safety clips need to be installed to prevent loss of attaching bolts in the bellcrank-to-control rod joints in the wing flap control system. This condition, if not corrected, could lead to failure of the flap control system and asymmetric flap retraction.

CASA has issued Service Bulletin 212-27-22, Revision 3, dated May 20, 1988, which describes procedures for modification of the bellcrank-to-control rod joints in the wing flap control system with the installation of additional safety clips and clamps. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the bellcrank-to-control rod joints in the wing flap control system in accordance with the service bulletin previously mentioned.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 41 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for parts is \$2,200 per airplane. Based on these figures, the

total cost impact of this AD to U.S. operators is estimated to be \$168,960.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C-212 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Casa: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance required as indicated below, unless previously accomplished.

To prevent failure of the wing flap control system, accomplish the following:

A. Within 180 days after the effective date of this AD, modify the bellcrank-to-control rod joints in the wing flap control system in accordance with CASA Service Bulletin 212-27-22, Revision 3, dated May 20, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

NOTE: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 17, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate
Aircraft Certification Service.

[FR Doc. 88-27444 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-36]

Proposed Removal of Transition Area; Gruver Municipal Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), airspace Docket No. 88-ASW-36, which was published in the Federal Register on October 6, 1988. The NPRM proposed to remove the transition area located at Gruver Municipal airport, TX, due to the decommissioning of the Gruver Nondirectional Radio Beacon (NDB) and the subsequent cancellation of the associated NDB standards instrument approach procedure (SIAP). However, the Gruver Municipal Airport will continue to be served by a VOR/DME-A SIAP, utilizing the Borger Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), thus requiring the existing transition area to remain unchanged.

DATE: This withdrawal is effective November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth TX 76193-0530; telephone: (817) 624-5561.

The Proposed Rule

On October 6, 1988, a Notice of Proposed Rulemaking was published in the Federal Register to remove the transition area located at Gruver Municipal Airport, TX (53 FR 39313). The proposed removal of the transition area was due to the decommissioning of the Gruver NDB and the subsequent cancellation of the associated NDB SIAP. However, the Gruver Municipal Airport will continue to be served by a VOR/DME-A SIAP utilizing the Borger VORTAC, thus requiring the existing transition area to remain unchanged.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88-ASW-36, as published in the Federal Register on October 6, 1988 (53 FR 39311), is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Fort Worth, TX, on November 17, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-27440 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Personnel

22 CFR Part 192

[SD-221]

Victims of Terrorism Compensation

AGENCY: Bureau of Personnel, Department of State.

ACTION: Proposed rule.

SUMMARY: The Bureau of Personnel proposes implementing regulations for Title VIII of Pub. L. 99-399 which describe benefits for victims of terrorism activity. The proposed regulations outline the eligibility for monetary, educational, medical, and death and disability benefits provided under the governing statute, and describe application procedures for eligible employees and family members.

DATES: Comments must be submitted on or before December 29, 1988.

ADDRESSES: For mailing public comments: Bureau of Personnel, Department of State (PER/ER),

Washington, DC 20520. For hand delivery of public comments: Bureau of Personnel (PER/ER), Room 1822, Department of State, 2401 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: S. Donald Youso, Office of Employee Relations, Bureau of Personnel, (202) 647-2781.

SUPPLEMENTARY INFORMATION: 22 CFR Part 192 implements Executive Order 12598 and Title VIII of Pub. L. 99-399, the Omnibus Diplomatic Security and Antiterrorism Act of 1986, which provides benefits to an individual in the civil service, or a citizen, national, or resident alien of the United States who is rendering personal service to the United States, and who is taken captive as a result of the individual's relationship with the U.S. Government commencing after January 21, 1981. This title also provides benefits to a captive's family, during and after the period of captivity.

Benefits for captives and their families include: the establishment of a special savings account, the provision of medical and health care to the extent that the care is incident to captivity and is not covered by Government or other health insurance, certain educational benefits, a cash payment to captives (whose captivity commences after November 4, 1979), and certain civil relief provisions of the Soldiers and Sailors Civil Relief Act of 1940.

Finally, these regulations provide for compensation in cases of disability and death for employees, family members of employees, and foreign national employees, where the disability or death was caused by hostile action and was a result of the individual's relationship with the U.S. Government and occurred after January 21, 1981.

Compensation for such disability or death includes a death benefit and payments for partial or total disability as well as payments for medical or health expenses related to the disability or death.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

These rules will not have a significant impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Paperwork Reduction Act

These regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 192

Education, Foreign Service, Government employees, Grant programs—education, Grant programs—health, Health care, Captives.

For the reasons set out in the preamble, it is proposed that 22 CFR 192, be added to Title 22, Chapter I, Subchapter T of the Code of Federal Regulations, as follows:

SUBCHAPTER T—HOSTAGE RELIEF

PART 192—VICTIMS OF TERRORISM COMPENSATION

Subpart A—General

- Sec.
- 192.1 Declarations of hostile action.
- 192.2 Application for determination of eligibility.
- 192.3 Definitions.
- 192.4 Notification of eligible persons.
- 192.5 Relationships among agencies.

Subpart B—Payment of Salary and Other Benefits for Captive Situations

- 192.10 Eligibility for benefits.
- 192.11 Applicable benefits.
- 192.12 Administration of benefits.

Subpart C—Application of Soldiers' and Sailors' Civil Relief Act to Captive Situations

- 192.20 Eligibility for benefits.
- 192.21 Applicable benefits.
- 192.22 Description of benefits.
- 192.23 Administration of benefits.

Subpart D—Medical Benefits for Captive Situations

- 192.30 Eligibility for benefits.
- 192.31 Applicable benefits.
- 192.32 Administration of benefits.
- 192.33 Disputes.

Subpart E—Educational Benefits for Captive Situations

- 192.40 Eligibility for benefits.
- 192.41 Applicable family benefits.
- 192.42 Applicable benefits for captives.
- 192.43 Administration of benefits.
- 192.44 Maximum limitation on benefits.

Subpart F—Compensation for Disability or Death

- 192.50 Eligibility for benefits.
- 192.51 Death benefit.
- 192.52 Disability benefits.

Authority: 5 U.S.C. 5569 and 5570 and E.O. 12598 (52 FR 23421)

Subpart A—General

§ 192.1 Declarations of hostile action.

(a)(1) The Secretary of State shall declare when and where individuals in the Civil Service of the United States, including members of the Foreign Service and foreign service nationals, or a citizen, national or resident alien of the United States rendering personal services to the United States similar to the service of an individual in the Civil

Service, have been placed in captive status commencing on or after November 4, 1979 for purposes of § 192.11(b) or January 21, 1981, for all other purposes under this part, which arises because of hostile action abroad and is a result of the individual's relationship with the U.S. Government as provided in the Victims of Terrorism Act, codified in 5 U.S.C. 5569 and 5570 and Executive Order 12598.

(2) The Secretary of State, in consultation with the Secretary of Labor, shall also declare when and where individuals in the Civil Service of the United States including members of the Foreign Service and foreign service nationals, individuals rendering personal services to the United States similar to the service of an individual in the Civil Service, and family members of these individuals are eligible to receive compensation for disability or death occurring after January 21, 1981. Such determinations shall be based on the decision by the Secretary of State that the disability or death was caused by hostile action abroad and was a result of the individual's relationship with the Government.

(3) Declarations of hostile action in domestic situations shall be made by the Secretary of State in consultation with the Attorney General of the United States and the head of the employing agency or agencies.

(b) The Secretary of State for actions abroad, or Agency Head for domestic actions, upon his or her own initiative, or upon application under § 192.2 shall determine which individuals in captive or missing status as so declared shall be considered captives eligible for benefits under the Act. The Secretary or Agency Head shall also determine who is eligible under the Act for benefits as a member of a family or household of a captive. The determination of the Secretary or Agency Head shall be final and not subject to judicial review, but any interested person may request reconsideration on the basis of information not considered at the time of original determination. The criteria for determination are set forth in sections 5569 and 5570 of Title 5 of U.S.C., and in these regulations.

§ 192.2 Application for determination of eligibility.

(a) Any person who believes that that person or other persons known to that person are either captives as defined in 5 U.S.C. 5569(a)(1), individuals who have suffered disability or death caused by hostile action which was a result of the individual's relationship with the U.S. Government, members of the family or

household of such individuals as defined in § 192.3(a)(1), or a child eligible for benefits under Subchapter D, may apply for benefits under this subchapter for that person, or on behalf of others entitled thereto.

(b) The application in connection with hostile action abroad shall be in writing, shall contain all identifying and other pertinent data available to the person applying about the person or persons claimed to be eligible, and shall be addressed to the Director General of the Foreign Service, Department of State, Washington, DC 20520. Applications may be filed at any time after a declaration under § 192.1(a), or within 60 days of the hostile action or after release from captivity. Later filing may be considered when in the opinion of the Secretary of State there is good cause for the late filing. Applications in connection with hostile action in domestic situations shall conform to these same requirements and be filed with the Agency Head.

§ 192.3 Definitions.

When used in this subchapter, unless otherwise specified, the terms—

(a) "Secretary of State" includes any person to whom the Secretary of State has delegated the responsibilities of carrying out this subpart.

(b) "Family Member" means:

(1) A spouse,
(2) An unmarried dependent child including a step-child or adopted child under 21 years of age,

(3) A person designated in official records or determined by the agency head or designee thereof to be dependent, and

(4) Other persons such as parents, non-dependent children, parents-in-law, persons who stand in the place of a spouse or parents, or other members of the family or household of a captive or employee, as determined by the Agency head concerned.

(c) "Agency Head" means the head of an Executive Agency of the U.S. Federal Government employing an individual affected by hostile action as covered by these regulations. The Secretary of State is the agency head with respect to any such individual not employed by an agency.

(d) "Captive" means any individual in a captive status commencing while such individual is in the Civil Service or a citizen, national or resident alien of the United States rendering personal service to the United States similar to the service of an individual in the Civil Service (other than as a member of the uniformed services.)

(e) "Captive Status" means a missing status which, as determined under

§ 192.1, arises because of a hostile action and is a result of the individual's relationship with the Government.

(f) "Principal" means the person whose captivity, death or disability forms the basis for benefits for that individual or for a family member under this subchapter.

(g) "Individual rendering personal services to the United States similar to the service of an individual in the Civil Service" includes contract employees and other individuals fitting that description.

(h) "Pay and Allowances" has the meaning set forth in 5 U.S.C. 5561(6) including:

- (1) Basic pay;
- (2) Special pay;
- (3) Incentive pay;
- (4) Basic allowances for quarters;
- (5) Basic allowance for subsistence; and
- (6) Station per diem allowances for not more than 90 days.

(i) "Child" means a dependent as defined in paragraph (b)(2) of this section.

§ 192.4 Notification of eligible persons.

The Director General of the Foreign Service for the Department of State, or other Agency Head in domestic situations, shall be responsible for notifying each individual determined to be eligible for benefits under the Act, or if that person is not available, a representative or family member of the eligible individual.

§ 192.5 Relationships among agencies.

(a) To assist in ensuring that eligible persons receive compensation, each Agency Head shall notify the Director General of the Foreign Service of the Department of State of any incident abroad which he or she believes may be appropriately declared a hostile action under § 192.1.

(b) The Director General of the Foreign Service for the Department of State shall promptly inform the head of any agency whenever an employee of that agency, or Family Member of such employee, is determined to be eligible for benefits under this subchapter in connection with hostile action abroad. Notification in connection with domestic situations shall be made by the Agency Head.

(c) In accordance with inter-agency agreements between the Department of State and relevant agencies—

(1) The Veterans Administration will periodically bill the Department of State for expenses it pays for each eligible person under Subpart E of this subchapter plus the administrative costs

of carrying out its responsibilities under this part.

(2) The Department of State will, on a periodic basis, determine the cost for services and benefits it provides to all eligible persons under this subchapter, and bill each agency for the medical service costs (in connection with hostile action abroad) and educational benefits attributable to Principals and Family Members, plus a proportionate share of related administrative expenses.

Subpart B—Payment of Salary and Other Benefits for Captive Situations

§ 192.10 Eligibility for benefits.

A person designated as a captive under Subpart A of this subchapter shall be eligible for benefits under this subpart.

§ 192.11 Applicable benefits.

(a) Captives are entitled to receive or have credited to their account, for the period in captive status, the same pay and allowances to which they were entitled at the beginning of that period or to which they may have become entitled thereafter.

(b) A person designated as a captive (or a family member of a Civil Service employee held in captive status) under subpart A of this subchapter whose captivity commenced on or after November 4, 1979, is also entitled to receive a cash payment from the captive's employing agency, for each day held captive, in an amount equal to but not less than one-half of the amount of the world-wide average per diem rate established under 5 U.S.C. 5702.

§ 192.12 Administration of benefits.

(a) The amount deducted from the pay and allowances of captives must be recorded in the individual accounts of the agency concerned. A Treasury designated account, set up on the books of the agency concerned, may be utilized by the head of an agency to report the net amount of pay, allowances and interest credited to captives pursuant to 5 U.S.C. 5569(b). Interest payments under this section shall be paid out of funds available for salaries and expenses of the agency. Interest shall be computed at a rate for any calendar quarter equal to the average rate paid on United States Treasury bills with 3-month maturities issued during the preceding calendar quarter, with quarterly compounding.

(b) Cash payments to captives for each day of captivity shall be made by the head of an agency before the end of the one-year period beginning on the date on which the captive status terminates. In the event the captive dies

in captivity or prior to payment of these benefits, payment shall be made to the eligible survivors under § 192.51(c) or the estate. A payment under this subchapter may be deferred or denied by the head of an agency pending determination of an offense committed by the captive under the provisions of 5 U.S.C. 8312.

Subpart C—Application of Soldiers' and Sailors' Civil Relief Act to Captive Situations

§ 192.20 Eligibility for benefits.

A person designated as a captive under Subpart A of this subchapter, shall be eligible for benefits under this part.

§ 192.21 Applicable benefits.

(a) Eligible persons are entitled to the benefits provided by the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501, et seq.), including the benefits provided by section 701 (50 U.S.C. App. 591) notwithstanding paragraph (c) thereof, but excluding the benefits provided by sections 104, 105, 106, 400 through 408, 501 through 512, and 514 (50 U.S.C. App. 514, 515, 516, 540 through 548, 561 through 572, and 574).

(b) In applying such Act for purposes of this section—

(1) the term "person in the military service" is deemed to include any such captive;

(2) The term "period of military service" is deemed to include the period during which such captive is in a captive status;

(3) References therein to the Secretary of the Army, the Secretary of the Navy, the Adjutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, or other officials of government are deemed, in the case of any captive, to be references to the Secretary of State; and

(4) the term "dependents" shall, to the extent permissible by law, be construed to include "Family Members" as defined in section 192.3 of these regulations.

§ 192.22 Description of benefits.

The following material is included to assist persons affected, by providing a brief description of some of the provisions of the Civil Relief Act. Note that not all of the sections applicable to captives have been included here. References to sections herein are references to the Civil Relief Act of 1940, as amended, followed by references in parentheses to the same section in the United States Code.

(a) *Guarantors, endorsers.* Section 103 (50 U.S.C. App. 513) provides that

whenever a captive is granted relief from the enforcement of an obligation, a court, in its discretion, may grant the same relief to guarantors and endorsers of the obligation. Amendments extend relief to accommodation makers and others primarily or secondarily liable on an obligation, and to sureties on a criminal bail bond. They provide, on certain conditions, that the benefits of the section with reference to persons primarily or secondarily liable on an obligation may be waived in writing.

(b) *Written Agreements.* Section 107 (50 U.S.C. App. 517) provides that nothing contained in the Act shall prevent captives from making certain arrangements with respect to their contracts and obligations, but requires that such arrangements be in writing.

(c) *Protection in Court.* Section 200 (50 U.S.C. App. 517) provides that if a captive is made a defendant in a court action and is unable to appear in court, the court shall appoint an attorney to represent the captive and protect the captive's interests. Further, if a judgment is rendered against the captive, an opportunity to reopen the case and present a defense, if meritorious, may be permitted within 90-days after release.

(d) *Court Postponement.* Section 201 (50 U.S.C. App. 521) authorizes a court to postpone any court proceedings if a captive is a party thereto and is unable to participate by reason of being a captive.

(e) *Relief Against Penalties.* Section 202 (50 U.S.C. App. 522) provides for relief against fines or penalties when a court proceeding involving a captive is postponed, or when the fine or penalties are incurred for failure to perform any obligation. In the latter case, relief depends upon whether the captive's ability to pay or perform is materially affected by being held captive.

(f) *Postponement of Action.* Section 203 (50 U.S.C. App. 523) authorizes a court to postpone or vacate the execution of any judgment, attachment or garnishment.

(g) *Period of Postponement.* Section 204 (50 U.S.C. App. 524) authorizes a court to postpone proceedings for the period of captivity and for 3 months thereafter, or any part thereof.

(h) *Extended Time Limits.* Section 205 (50 U.S.C. App. 525) excludes the period of captivity from computing time under existing or future statutes of limitation. Amendments extend relief to include actions before administrative agencies, and provide that the period of captivity shall not be included in the period for redemption of real property sold to enforce any obligation, tax, or assessment. Section 207 excludes application of section 205 to any period

of limitation prescribed by or under the internal revenue laws of the United States.

(i) *Interest Rates.* Section 206 (50 U.S.C. App. 526) provides that interest on the obligations of captives shall not exceed a specified per centum per annum, unless the court determines that ability to pay greater interest is not affected by being held captive.

(j) *Misuse of Benefits.* Section 600 (50 U.S.C. App. 580) provides against transfers made with intent to delay the just enforcement of a civil right by taking advantage of the Act.

(k) *Further Relief.* Section 700 (50 U.S.C. App. 590) provides that a person, during a period of captivity or 6 months thereafter, may apply to a court for relief with respect to obligation incurred prior to captivity, or any tax or assessment whether falling due prior to or during the period of captivity. The court may, on certain conditions, stay the enforcement of such obligations.

(l) *Stay of Eviction.* Section 300 (50 U.S.C. App. 530) provides that a captive's dependents shall not be evicted from their dwelling if the rental is minimal, except upon leave of a court. If it is proved that inability to pay rent is a result of being in captivity, the court is authorized to stay eviction proceedings for not longer than 3 months. An amendment extends relief to owners of the premises with respect to payment on mortgage and taxes.

(m) *Contract and Mortgage Obligations.* As provided by sections 301 and 302 of the Act (50 U.S.C. App. 531 and 532), as amended, contracts for the purchase of real and personal property, which originated prior to the period of captivity, may not be rescinded, terminated, or foreclosed, or the property repossessed, except as provided in section 107 (50 U.S.C. App. 517), unless by an order of a court. The mentioned sections give the court wide discretionary powers to make such disposition of the particular case as may be equitable in order to conserve the interests of both the captive and the creditor. The cited sections further provide that the court may stay the proceedings for the period of captivity and 3 months thereafter, if in its opinion the ability of the captive to perform the obligation is materially affected by reason of captivity. Section 303 (50 U.S.C. App. 533) provides that the court may appoint appraisers and, based upon their report, order such sum as may be just, if any, paid to captives or their dependents, as a condition to foreclosing a mortgage, resuming possession of property, and rescinding or terminating a contract.

(n) *Termination of a Lease.* Section 304 (50 U.S.C. App. 534) provides, in general, that a lease covering premises occupied for dwelling, business, or agricultural purpose, executed by persons who subsequently become captives, may be terminated by a notice in writing given to the lessor, subject to such action as may be taken by a court on application of the lessor. Termination of a lease providing for monthly payment of rent shall not be effective until 30 days after the first date on which the next rental payment is due, and, in the case of other leases, on the last day of the month following the month when the notice is served.

(o) *Assignment of Life Insurance Policy.* Section 305 (50 U.S.C. App. 535) provides that the assignee of a life insurance policy assigned as security, other than the insurer in connection with a policy loan, except upon certain conditions, shall not exercise any right with respect to the assignment during period of captivity of the insured and one year thereafter, unless upon order of a court.

(p) *Storage Lien.* Section 305 (50 U.S.C. App. 535) provides that a lien for storage of personal property may not be foreclosed except upon court order. The court may stay proceedings or make other just disposition.

(q) *Extension of Benefits to Dependents.* Section 306 (50 U.S.C. App. 536) extends the benefits to sections 300 through 305 to dependents of a captive.

(r) *Real and Personal Property Taxes.* Section 500 (50 U.S.C. App. 560) forbids sale of property, except upon court leave, to enforce collection of taxes or assessments (other than taxes on income) on personal property or real property owned and occupied by the captive or dependents thereof at the commencement of captivity and still occupied by the captive's dependents or employees. The court may stay proceedings for a period not more than 6 months after termination of captivity. When by law such property may be sold to enforce collection, the captive will have the right to redeem it within 6 months after termination of captivity. Unpaid taxes or assessments bear interest at 6 percent.

(s) *Income Taxes.* Section 513 provides for deferment of payment of income taxes.

(t) *Certification of Captive.* Section 601 provides that a certificate signed by the agency head shall be prima facie evidence that the person named has been a captive during the period specified in the certification.

(u) *Interlocutory Orders.* Section 602 (50 U.S.C. App. 582) provides that a court may revoke an interlocutory order it has issued pursuant to any provision

of the Soldiers' and Sailors' Civil Relief Act of 1940.

(v) *Power of Attorney.* Section 701 (50 U.S.C. App. 591) provides that certain powers of attorney executed by a captive which expire by their terms after the person was captured shall be automatically extended for the period of captivity. Exceptions are made with respect to powers of attorney which by their terms clearly indicate they are to expire on the date specified irrespective of captive status. (Section 701 applies to American captives notwithstanding paragraph (c) thereof which states that it applies only to powers of attorney issued during the "Vietnam era").

§ 192.23 Administration of benefits.

(a) The Director General of the Department of State or Agency Head will issue certifications or other documents when required for purposes of the Civil Relief Act.

(b) The Director General of the Department of State or Agency Head shall whenever possible promptly inform the chief legal officer of each U.S. State in which captives maintain residence of all persons determined to be captives eligible for assistance under this subpart.

Subpart D—Medical Benefits for Captive Situations

§ 192.30 Eligibility for benefits.

A person designated as a captive or family member of a captive under Subpart A of this subchapter, shall be eligible for benefits under this subpart.

§ 192.31 Applicable benefits.

A person eligible for benefits under this part shall be eligible for authorized physical and mental health care at U.S. Government expense (through either advancement or reimbursement), and for payment of other authorized expenses related to such care or for obtaining such care for any illness or injury, to the extent, as determined by the Secretary of State or Agency Head, that such care is incident to an individual being held captive and is not covered by—

(a) Any other Government health or medical program, including, but not limited to, the program administered by the Secretary of Defense, the Secretary of Labor and the Administrator of Veteran Affairs; or

(b) Reimbursement by any private or Government health insurance or comparable plan. In the case of coverage by a private or Government health insurance plan, that carrier will be designated as the primary carrier, and benefits under this subpart will serve only to supplement expenses not paid by the primary carrier.

§ 192.32 Administration of benefits.

(a) (1) A person eligible due to hostile action abroad, who desires medical or health care under this subpart or any person acting on behalf thereof, shall submit an application to the Office of Medical Services, Department of State, Washington, DC 20520 (hereafter referred to as the "Office"). That office will handle and process medical applications and claims using the criteria in this subpart. Persons eligible in connection with domestic situations shall make application with the Agency Head, and the Agency Head shall apply the following procedures in administering medical benefits in the respective agency.

(2) The applicant shall supply all relevant information, including insurance information, requested by the Director of the Office. An eligible person may also submit claims to the Office for payment for emergency care when there is not time to obtain prior authorization as prescribed by this paragraph.

(b) The Office shall evaluate all requests for care and claims for reimbursement and determine, on behalf of the Secretary of State, whether the care in question is authorized under § 192.31 of this subpart. The Office will authorize care or payment of care, when it determines the criteria of section 192.31 are met. Authorization shall include a determination as to the necessity and reasonableness of medical or health care.

(c) The Office will refer applicants eligible for benefits under other Government health programs to the Government agency administering those programs. Any portion of authorized care not provided or paid for under another Government program or private insurance will be reimbursed under this subpart, subject to a determination of the reasonableness of charges. Such determination shall be made by applying the fee schedule established by the Office of Workers' Compensation Programs (OWCP), Department of Labor, which is used in paying medical benefits for work-related injuries to employees who are fully covered by OWCP.

(d) Eligible persons may obtain authorized care from any licensed facility or health care provider of their choice approved by the Office. To the extent possible, the Office will attempt to arrange for authorized care to be provided in a Government facility at no cost to the patient.

(e) Authorized care provided by a private facility or health care provider will be paid or reimbursed under this

subpart to the extent that the Office determines that costs do not exceed reasonable and customary charges for similar care in the locality.

(f) All bills for authorized medical or health care covered by insurance shall be submitted to the patient's insurance carrier for payment prior to submission to the Office for payment of the balance authorized by this part. The Office will request the health care providers to bill the insurance carrier and the Department of State for authorized care, rather than the patient.

(g) Eligible persons will be reimbursed by the Office for authorized travel to obtain an evaluation of their claim under paragraph (b) of this section and for other authorized travel to obtain medical or health care authorized by this subpart.

§ 192.33 Disputes.

Any dispute between the Office and eligible persons concerning whether medical or health care is required in a given case, whether required care is incident to the captivity, or whether the cost for any authorized care is reasonable and customary, shall be referred to the Medical Director, Department of State for a determination. If the person bringing the claim is not satisfied with the decision of the Medical Director, the dispute shall be referred to a medical board composed of three physicians, one appointed by the Medical Director, one by the eligible person and the third by the first two members. A majority decision by the board shall be binding on all parties.

Subpart E—Educational Benefits for Captive Situations

§ 192.40 Eligibility for benefits.

(a) A spouse or unmarried dependent child (including an unmarried dependent stepchild or adopted child) under 21 years of age of a captive as determined under Subpart A of the subchapter shall be eligible for benefits under 192.41 of this subpart. (Certain limitations apply, however, to persons eligible for direct assistance through other programs of the Veterans Administration under Chapter 35 of Title 38, United States Code).

(b) A Principal designated as a captive under Subpart A of this subchapter, who intends to change jobs or careers because of the captive experience and who desires additional training for this purpose, shall be eligible for benefits under 192.42 of this part unless such person is eligible for comparable benefits under Title 38 of the United States Code as determined by the Administrator of the Veterans Administration.

§ 192.41 Applicable family benefits.

(a) An eligible spouse or child shall be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses while attending an educational or training institution approved in accordance with procedures established by the Veterans Administration, which shall be comparable to procedures established pursuant to Chapters 35 and 36 of Title 38 U.S.C.

(b) Except as provided in paragraph (c) or (d) of this section, payments shall be available under this subsection for an eligible spouse or child for educational training which occurs—

(1) 90 days after the Principal is placed in a captive status, and

(i) Through the end of any semester or quarter which begins before the date on which the Principal ceases to be in a captive status, or

(ii) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the sixteen-week period following that date.

(c) In special circumstances and within the limitation of § 192.44, the Secretary of State, under the criteria and procedures set forth in § 192.43, may approve payments for education or training under this subsection which occurs after the date determined under paragraph (b) of this section.

(d) In the event a Principal dies and the death is determined by the Agency Head to be incident to that individual being a captive, payments shall be available under this subsection for education or training of a spouse or child of the Principal which occurs after the date of death, up to the maximum that may be authorized under § 192.44.

(e) Family benefits under this subsection shall not be available for any spouse or child who is eligible for assistance under Chapter 35 of Title 38 U.S.C., or similar assistance under any other law.

§ 192.42 Applicable benefits for captives.

(a) When authorized by the Agency Head, a Principal, following release from captivity, may be paid (by advancement or reimbursement) for expenses incurred for subsistence, tuition, fees, supplies, books and equipment, and other educational expenses while attending an educational or training institution approved in accordance with procedures established pursuant to Chapter 35 and 36 of Title 38 U.S.C. Payments shall be available under this

subsection for education or training which occurs on or before—

(1) The end of any semester or quarter (as appropriate which begins before the date which is 10 years after the day on which the Principal ceases to be in a captive status, or

(2) If the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the sixteen-week period following that date.

(b) A person eligible for benefits under this subsection shall not be required to separate from Government service in order to undertake the training or education. However, no educational assistance allowance shall be paid to any eligible person who is attending a course of education or training paid for under the Government Employees' Training Act and who full salary is being paid to such person while so training.

§ 192.42 Administration of benefits.

(a) Any person desiring benefits under this part, shall apply in writing to the Director General of the Foreign Service, Department of State, Washington, DC 20520. The application shall specify the benefits desired and the basis of eligibility for those benefits. The Director General of the Foreign Service, on behalf of the Secretary of State, shall make determinations of eligibility for benefits under this part, and shall forward certified applications to the Veterans Administration and advise the applicant of the name and address of the Office in the Veterans Administration that will counsel the eligible persons on how to obtain the benefits that have been approved. Persons whose applications are disapproved shall be advised in writing of the reason for the disapproval. Applications for foreign service nationals and their dependents shall be made with the Office of Foreign Service National Personnel, Department of State. That office will handle the administrative details and benefits using the criteria specified in this subchapter.

(b) The Veterans Administration shall provide the same level and kind of assistance, including payments (by advancement or reimbursement) for authorized expenses up to the same maximum amounts, to spouses and children of captives, and to Principals following their release from captivity as it does to eligible spouses and children of veterans and to eligible veterans, respectively, under Chapters 35 and 36 of Title 38 U.S.C. The Veterans Administration shall, under procedures

it has established to administer section 1724 of Title 38, U.S.C., discontinue assistance for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to such section 1724.

(c) An Advisory Board shall be established to advise on eligibility for benefits under paragraphs (c) and (d) of §§ 192.41 and 192.42. The Board shall be composed of the Under Secretary of State for Management as Chair, the Director of the Office of Medical Services of the Department of State, the Executive Director of the regional bureau of the Department of State in whose region the relevant hostile action occurred, the Director of Personnel or other designee of the applicable employing agency, and a representative of the Veterans Administration designated by the Administrator.

(d) If an application is received from a spouse or child for extended training under § 192.41(c), the Director General of the Foreign Service of the Department of State shall determine with the advice of the Advisory Board whether the Principal, following release from captivity, is incapacitated by the captive experience—

(1) To the extent that he or she has not returned to full-time active duty and is unlikely to be able to resume the normal duties of his or her position or career, or

(2) In the event of a separation from Government service, that the Principal is unable to assume a comparable position or career, for at least six months from the date of release from captivity.

If the Secretary makes such a determination, he or she may approve, within the limits of § 192.44, an application under § 192.41(c) for up to one year of education or training. If the Principal remains incapacitated, the Secretary may approve additional training or education up to the maximum authorized under § 192.44.

§ 192.44 Maximum limitation on benefits.

(a) In no event may assistance be provided under this subpart for any individual for a period in excess of 45 months, or the equivalent thereof in part-time education or training.

(b) The eligibility of a spouse for benefits under paragraph (c) or (d) of § 192.41 shall expire on a date which is 10 years after the date of the release of the captive or the death of the captive while in captivity, respectively. The eligibility of a dependent child for benefits under § 192.41 (c) and (d) shall expire on the 21st birthday of such child or on such later date as determined by the Administrator of the Veterans Administration or Agency Head, as if

section 1712 to Title 38, U.S.C., were applicable.

Subpart F—Compensation for Disability or Death

§ 192.50 Eligibility for benefits.

(a)(1) The Federal Employees' Compensation Act (5 U.S.C. 8010 et seq.) provides for medical coverage and the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties to the United States. The Office of Workers' Compensation Programs (OWCP), Department of Labor, administers the program. All individuals employed by the U.S. Government are eligible to apply for wage-loss and medical benefits under the FECA. Family members of such employees may apply for death benefits. An application must be made with OWCP by such individual or on behalf of such individuals, prior to the determination of eligibility or payment of any benefits under this subpart.

(2) In the case of foreign service national employees covered for work related injury or death under the local compensation plan established pursuant to 22 U.S.C. 3968, such applications should be filed with the organizational authority in the country of employment which provides such coverage. Benefit levels payable to foreign service national employees under this subpart shall be no less than comparable benefits payable to U.S. citizen employees under FECA. Eligibility determination and payment of supplemental benefits, if any, is the responsibility of the Director General of the Foreign Service for the State Department.

(b) Any death or disability benefit payment made under this section shall be reduced by the amount of any other death or disability benefits funded in whole or in part by the United States, except that the amount shall not be reduced below zero. The cash payment under 192.11(b) of Subpart B is excluded from the offset requirement.

(c) Compensation under this section may include payment (whether advancement or reimbursement) for any medical or health expenses relating to the death or disability involved to the extent that such expenses are not covered under subpart D of these regulations. Procedures of subpart D of these regulations shall apply in making such determinations.

§ 192.51 Death benefit.

(a) The Secretary of State or Agency Head may provide for payment, by the employing agency, of a death benefit to the surviving dependents of any eligible individual under 192.1(a) who dies as a result of injuries caused by hostile action or as the result of captivity.

(b) The death benefit payment for an employee shall be equal to one year's salary at the time of death. Such death benefit is subject to the offset provisions under 192.50(b) including the Federal Employees' Compensation Act. The death benefit for an employee's spouse and other eligible individuals under 192.1(b) of Subpart A shall be equal to one year's salary of the principal at the time of death.

(c) A death benefit payment for an adult under this section shall be made as follows:

- (1) First, to the widow or widower.
- (2) Second, to the dependent child, or children in equal shares, if there is no widow or widower.
- (3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.
- (4) Fourth, to adult, non-dependent children in equal shares.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) A death benefit payment for a child under this section shall be made as follows:

To the surviving parents or legal guardian. If there are no surviving parents or legal guardian, no payment shall be made.

(e) As used in this section—each of the terms "widow", "widower", and "parent" shall have the same meaning given such term by section 8101 of Title 5, U.S.C.; "child" has the meaning given in § 192.3(b)(2).

§ 192.52 Disability benefits.

(a) Principals who qualify for benefits under 192.1 and are employees of the U.S. Government are considered for disability payments under programs administered by the Office of Workers' Compensation Programs (OWCP), Department of Labor, or in the case of foreign service national employees, the programs may be administered by either OWCP or the organizational authority in the country of employment which provides similar coverage under the local compensation plan established pursuant to 22 U.S.C. 3968. Normal filing procedures as specified by either OWCP or the local organizational authority which provides such coverage should be followed in determining eligibility. Duplicate benefits may not be received

from both OWCP and the local organizational authority for the same claim. Additional benefits to persons qualifying for full FECA or similar benefits would not normally be payable under this subpart, except to foreign service national employees whose benefit levels are below comparable benefits payable to U.S. citizen employees under FECA. Foreign service national employees whose benefit levels are below comparable benefits payable to U.S. citizens under FECA may receive benefits under this subpart so that total benefits received are comparable to the benefits payable to U.S. citizen employees under FECA.

(b) Family members who do not qualify for either OWCP benefits or benefits from the organizational authority in the country of employment which provides similar coverage, and anyone eligible under § 192.1(a) who does not qualify for full benefits from OWCP, must file an application for disability benefits with the Office of Medical Services, Department of State, for a determination of eligibility under this subpart, if connected with hostile action abroad. Applications made in connection with hostile action in domestic situations will be directed to the Agency Head. Such applications for disability payments will be considered using the same criteria for determination as established by OWCP.

(c) Family members who are determined to be disabled by the Office of Medical Services, or Agency Head using the OWCP criteria, are eligible to receive a lump-sum payment based on the following guidelines:

(1) Permanent total disability rate. A lump-sum payment equal to two year's salary of the Principal at the time of the qualifying incident.

(2) Temporary total disability rate. A lump-sum payment computed at 66% percent of the monthly pay rate of the Principal for each month of temporary total disability, not to exceed one year's salary of the Principal.

(3) Partial disability rate. A lump-sum payment authorized in accordance with 5 U.S.C. 8106, equal to 66% percent of the difference between the monthly pay at the time of the qualifying incident and the monthly wage-earning capacity of the family member after the beginning of the partial disability, not to exceed one year's salary of the Principal. For family members with no wage-earning history, a lump-sum payment equal to 66% percent of the difference between the estimated monthly wage-earning capacity of the family member at the time of the qualifying incident and the monthly wage-earning capacity after the beginning of the partial disability, not to

exceed one year's salary of the Principal may be authorized, using the criteria established by OWCP for such determination.

(4) Special loss schedule. In addition to the temporary disability benefits payable in accordance with this subsection, if there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, a lump-sum payment may be authorized at the rate of 25 percent of the payment authorized in accordance with the schedule and procedures in 5 U.S.C. 8107 and 20 CFR 10.304. The Director General of the Foreign Service of State or the Agency Head, may at their discretion, authorize payments under this subpart in addition to payments for those organs and members of the body specified in 5 U.S.C. 8107 and in 20 CFR 10.304. The provisions of 20 CFR Part 10, Subpart D, which prevent the payment of disability compensation and scheduled compensation simultaneously, shall not apply to these regulations.

Cash payments under this subpart are the responsibility of the employing agency.

George S. Vest,

Director General of the Foreign Service and
Director of Personnel.

October 6, 1988

[FR Doc. 88-27298 Filed 11-28-88; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF EDUCATION

34 CFR Part 237

Christa McAuliffe Fellowship Program; Correction

AGENCY: Department of Education.

ACTION: Correction; notice of proposed rulemaking.

SUMMARY: This action corrects a notice of proposed rulemaking published on November 15, 1988 (53 FR 46072). On page 46072, in the first column, change the first line of the **SUMMARY** to read: "The Secretary proposes to amend * * *". Remove the paragraph following **EFFECTIVE DATE:** and add, in its place, "Comments must be received on or before December 30, 1988". Add the following section after the paragraph on **EFFECTIVE DATE.**

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Richard La Pointe, Deputy Assistant Secretary, Regulations, Innovation and Development, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue

SW., Washington, DC 20202. Telephone (202) 732-4659.

Program Authority: 20 U.S.C. 113-1113e, unless otherwise noted.

Dated: November 22, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88-27513 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Modification of Fees for Record Retrieval by Computer

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to modify the fees charged for furnishing Postal Service records retrieved by computer to members of the public. The proposed modified fees implement existing policy to recover the actual cost incurred by the Postal Service for the retrieval and represent no change in policy concepts.

DATE: Comments on the modified fees must be received on or before December 29, 1988.

ADDRESS: Comments may be mailed to the Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010 or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith (202) 268-2931.

SUPPLEMENTARY INFORMATION: The proposed fee modifications do not alter the basic concepts or thrust of Postal Service policy in the area of records retrieval fees that may be charged in connection with the release of information to the public. Computer retrieval fees were last published on April 24, 1987 (52 FR 13667). The fees are subject to periodic revision. The proposal modifications to Part 265—*Release of Information*—revise the fees for retrieving data by computer to reflect current labor and administrative costs.

List of Subjects in 39 CFR Part 265

Freedom of information, Postal Service.

For the reasons stated herein, the Postal Service proposes to amend 39 CFR Part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.8 [Amended]

2. Section 265.8(b)(1)(ii) is amended by removing the parenthetical sentence at the end thereof and adding, in its place, the following sentence: "(See Appendix A.)"

3. Appendix A to Part 265 is revised to read as follows:

Appendix A—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Description of services	Price	Unit
A. System Utilization Services: Central Processor Unit (CPU) Based upon IBM 3090-200 Performance Standard		
Batch Processing..	\$3,000.00	Hour.
Time Sharing Option (TSO).	3,400.00	Hour.
Customer Information Control System (CICS).	3,400.00	Hour.
Integrated Data Base Management System (IDMS).	3,400.00	Hour.
Direct Access Storage Device (DASD) Channel Utilization (EXCPs—execution of channel programs).	.45	1,000 lines.
Tape Channel Utilization (EXCPs).	.80	1,000 lines.
Local Printing95	1,000 lines.
B. Personnel Charges:		
Manual Unit Personnel.	30.00	Hour.
Systems and Programming Personnel.	42.00	Hour.

J. Fred Eggleston

Assistant General Counsel, Legislative Division.

[FR Doc. 88-27493 Filed 11-28-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3483-3; TN-063]

Approval and Promulgation of Implementation Plans; Tennessee; Disapproval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA proposes to disapprove a variance, Tennessee Air Pollution Control Board Order 21-87, which allows the North American Rayon Corporation (NARC) to operate Boilers 1 and 2 at the NARC Plant in Elizabethtown, Carter County, Tennessee during emergencies. Disapproval is proposed because the technical support document submitted by the Tennessee Division of Air Pollution Control does not include adequate air quality modelling information.

DATES: To be considered, comments must reach us on or before December 29, 1988.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, 4th Floor Customs House, 701 Broadway, Nashville, Tennessee 37219.

Environmental Protection Agency, Air Programs Branch—Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes, EPA Region IV Air Programs Branch, at the address listed above, and phone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On January 6, 1988, The Tennessee Division of Air Pollution Control (Division) submitted several Board Orders as State Implementation Plan (SIP) revisions. Each Board Order addressed approvals of variances from or revisions to Division rules for various companies operating in Tennessee. SIP revision requests for companies other than NARC will be addressed in other notices.

Operation of NARC Boilers 1 and 2 during emergencies was approved in Board Order 21-87, which allows

variances from Division rules 1200-3-6-.02, 1200-3-5-.01 and 1200-3-9-.02. NARC operates nine boilers (Nos. 1, 2, 4, 5, 6, 7, 8, 9 and 10). Boilers 4-10 are used during normal operation and have adequate emission control equipment; however, Boilers 1 and 2, which are operated in emergency situations, have no emission control equipment.

In order to approve any SIP revision, EPA must have adequate assurance that the revision will not jeopardize either the National Ambient Air Quality standards (NAAQS) or the prevention of significance deterioration (PSD) increments (see 40 CFR 51.160(a), 51.165(a) (1) and (2) and 51.166(a) (1) and (2)). In the case of a relaxation of a particulate emission limit, such assurance must consist of air quality dispersion modelling.

In the technical support document submitted by Tennessee, an adequate modelling analysis was not submitted. The agency submitted a screening analysis which did consider the worst-case scenario but did not consider the effects of downwash. Tennessee did not give any justification for the omission of downwash.

On February 5, 1988, EPA requested from the Division additional information concerning the air quality modelling that was submitted. This information has not been received.

Proposed Action

EPA has reviewed the submitted material and found that it does not contain adequate information necessary to evaluate the requested SIP revision. Therefore, EPA is proposing to disapprove Board Order 21-87, which allows a variance from Division rules in order for the North American Rayon Corporation to operate Boilers 1 and 2 during emergencies. Interested persons are invited to submit comments on this proposed disapproval. EPA will consider all comments received within thirty days of the publication of this notice.

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. If EPA takes final action as proposed today, the operation of North American Rayon Corporation would be affected, but we do not have sufficient information to determine exactly what impact such a decision would have. However, if information can be submitted to show the effects of the variance on air quality are minimal, EPA will withdraw the proposed disapproval and propose approval.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control,
Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401-7642.

Dated: July 13, 1988.

Lee A. DeHhns, III,

Acting Regional Administrator.

[FR Doc. 88-27457 Filed 11-28-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3483-5]

Ocean Dumping; Proposed De-designation of a Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposed to de-designate an ocean disposal site formerly used to dispose of industrial waste, known as the Deepwater Industrial Waste Disposal Site. At the time of the Final Designation of this site, May, 1984, the Final Environmental Impact Statement (FEIS) concluded that designation of the site was appropriate since all the provisions of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*, as amended), as well as EPA's Ocean Dumping Regulations and Criteria (40 CFR Parts 220 through 225, 227 through 229; 42 FR 2462 as amended) were satisfied. This is no longer the case. Therefore, the Agency proposes to de-designate the Deepwater Industrial Disposal Site in accordance with the provisions of § 228.11(a), which specifies that modifications in disposal site use which involve the withdrawal of designated disposal sites from use will be based upon environmental impacts and/or changed circumstances concerning use of the site, and § 228.11(d), which specifies that the determination of the Administrator as to whether to terminate use of a disposal site will be based on the impact of disposal at the site itself and on the Criteria. "Criteria" as defined at § 220.2(g) refers to the criteria set forth in Part 227 of Subchapter H, which includes determination of need for designation of a disposal site. There are no current permittees utilizing the Deepwater Industrial Waste Disposal Site. The most recent permits expired in 1987, and subsequent re-applications

from the two permittees were withdrawn because of the feasibility of land-based alternatives. Therefore, the need for the Deepwater Industrial Waste Disposal Site has effectively been eliminated, so the site no longer complies with the above mentioned criteria.

DATE: Comments must be received on or before January 13, 1989.

ADDRESS: Send comments to: Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA, Region II, 26 Federal Plaza, New York, New York, 10278-0090.

FOR FURTHER INFORMATION CONTACT: Mario P. Del Vicario, (212) 264-5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.*, ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. Management authority for all sites is delegated to the EPA organizational entity under which each site is located. This site designation is being proposed pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). The Deepwater Industrial Waste Site was added by 49 FR 19012, May 4, 1984. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

The site was originally among the fourteen municipal and industrial waste disposal sites given interim designation status when the EPA Ocean Dumping Regulations were published in 1972. Subsequent to enactment of the Marine Protection, Research and Sanctuaries Act (MPRSA) in 1972, over 100 permittees have dumped industrial wastes at various ocean dump sites, including the Deepwater Industrial Waste Disposal Site. Quantities of industrial wastes dumped at the interim-designated site decreased from 329,000 wet tons in 1973 to 192,000 wet tons in 1982. After final designation of the Deepwater Industrial Waste Disposal Site, quantities of waste dumped decreased even further. In 1985, 99,000 wet tons of material were disposed of at the site; this quantity increased to 213,000 wet tons in 1986, but decreased

to 28,000 wet tons in 1987. In 1988, there was no industrial waste disposal at this site.

B. EIS Development

EPA's Ocean Dumping Regulations and Criteria contain provisions for selecting and designating ocean disposal sites. When these regulations were published in 1972, fourteen municipal and industrial waste disposal sites were listed in the regulations and given interim designation.

In June 1979 a Draft Environmental Impact Statement (DEIS) was published recommending the permanent designation of the Deepwater Industrial Waste Disposal Site. Through this EIS, EPA conducted an in-depth study of the dump site to determine its acceptability with the criteria and regulations. A public hearings to solicit additional comments was held in August 1979. The Final EIS was published in February 1980 and the designation of a permanent industrial waste disposal site occurred in May 1984. At the time, the need for the site designation was demonstrated.

C. Location

The current Deepwater Industrial Waste Disposal Site is a portion of the former interim-designated 106-Mile Site. The Deepwater Industrial Waste Disposal Site is located approximately 90 nautical miles off the coast of Cape May, New Jersey. The site is circular with a radius of three nautical miles, and water depths at the site range from 2,250 to 2,750 meters. The center coordinates of the site to the de-designated are as follows:

Latitude: 38°45'00" N

Longitude: 72°20'00" W

D. Regulatory Requirements

EPA proposes to de-designate the Deepwater Industrial Waste Disposal Site in accordance with the provisions of EPA's Ocean Dumping Regulations and Criteria. Section 228.11(a), specifies that modifications in disposal site use which involve the withdrawal of designated disposal sites from use will be based upon environmental impacts and/or changed circumstances concerning use of the site. Section 228.11(d) specifies that the determination of the Administrator as to whether to terminate use of a disposal site will be based on the impact of disposal at the site itself and on the Criteria. "Criteria" as defined at § 220.2(g) refers to the criteria set forth in part 227 of Subchapter H, which includes determination of need for designation of a disposal site. There are

no current permittees utilizing the Deepwater Industrial Waste Disposal Site. The most recent permits expired in 1987, and subsequent re-applications from the two permittees were withdrawn because of the feasibility of land-based alternatives. Therefore, the need for the Deepwater Industrial Waste Disposal Site has effectively been eliminated, so the site no longer complies with the above-mentioned criteria.

The last permits were issued by EPA in 1984 for ocean disposal of industrial wastes at the site. Both of these permits have expired and there are currently no authorized permits for disposal at this site. No ocean dumping has been conducted at the site since March 1987.

The Criteria stipulate that an ocean dumping permit can be issued only if there are no alternatives to ocean disposal which are technically feasible, economically reasonable, and which would have less adverse impact on the overall environment than ocean disposal. All permits issued contain conditions requiring the permittee to evaluate and implement alternative disposal which do not involve discharge at the Deepwater Industrial Waste Disposal Site have been identified.

E. Proposed Action

In view of the fact that feasible alternatives to disposal at the Deepwater Industrial Waste Disposal Site have been identified, and there is no current or reasonably foreseeable need for the site, EPA hereby proposes to de-designate the Deepwater Industrial Waste Disposal Site, in accordance with EPA Ocean Dumping Regulations.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. Since there are no current permittees, EPA has determined that this action will not have a significant impact on small entities. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects that would result in its classification as a major rule under the Executive Order. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: November 10, 1988.

William Muszynski,

Acting Regional Administrator, Region II.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. secs. 1412 and 1418.

§ 228.12 [Amended.]

2. Section 228.12 is amended by removing paragraph (b)(17).

[FR Doc. 88-27455 Filed 11-28-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[SW-FRL-3477-7]

National Oil and Hazardous Substances Contingency Plan; the National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces its intent to delete the Parramore Surplus Company site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all appropriate Fund-financed responses under CERCLA have been implemented and completed and EPA, in consultation with the State has determined that no further cleanup by responsible parties is necessary. This notice is intended to solicit public comment on the intent of EPA to delete the Parramore Surplus Company site.

DATES: Comments concerning this site may be submitted on or before December 24, 1988.

ADDRESSES: Comments may be mailed to Patrick M. Tobin, Director, Waste Management Division, c/o Jeanne Dove, Site Project Manager, 345 Courtland Street NE., Atlanta, Georgia. The comprehensive information on this site is available through the EPA Regional Docket clerks. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is: Gayle Alston, Region IV, USEPA Library, Room G-8, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/347-4216.

FOR FURTHER INFORMATION CONTACT:

Patrick M. Tobin, Director, Waste Management Division, c/o Jeanne Dove, Site Project Manager, 345 Courtland Street NE., Atlanta Georgia 30365.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region IV announces its intent to delete Parramore Surplus site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register**. Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912), § 300.66(c)(7) of the NCP provides that sites:

* * * may be deleted from or reclassified on the NPL where no

further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the *Federal Register* on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the *Federal Register* on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community

surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site. The Agency is considering using similar procedures in the future with the exception that the notice and the comment period is being conducted at the local level concurrent with this notice through the *Federal Register*.

The procedures used are:

1. EPA Regional Office recommended deletion and prepared relevant documents.

2. EPA Regional Office is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories.

3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete is made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the *Federal Register*, and the NPL will reflect any deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

Parramore Surplus Company Site, Mt. Pleasant, Florida

The Parramore Surplus site is a 25 acre site located in northwestern Gadsden County, Florida in the town of Mt. Pleasant. The site is privately owned and has operated as a facility which stores and resells surplus government products since 1972. The products were purchased from various naval and air force bases in Florida and Alabama. Some of these products were drummed paint residues, waste oil, alcohols, and degreasers.

The Florida Department of Environmental Regulation (FDER) conducted a site inspection in March 1982 and found an estimated 400 to 600 drums being stored. Many of the drums were leaking and killing the surrounding vegetation. At the request of the FDER, EPA conducted a site inspection and collected soil and waste samples in May

1982. Laboratory analyses performed on those samples revealed the presence of PCB-1254 at a concentration of 72 mg/kg. Consequently, on August 16, 1982, the site was added to the National Priorities List (NPL).

A meeting with the EPA, FDER and the site owner resulted in an agreement that the Parramore Surplus Company would voluntarily clean up the PCB contaminated soil. The clean-up was accomplished over the next few months. Both the FDER and the EPA inspected the Parramore site and noted on July 28, 1983 that the conditions of the clean-up agreement had been met. During the investigation, three additional contaminated areas were observed. At the request of the FDER, the owner cleaned up these areas as well.

Following an unannounced visit to the site, the FDER formally requested on August 25, 1983, that the site be removed from the NPL.

There are no major water bodies in the Parramore Surplus Company site. Possible sources of ground water contamination have been removed. A Public Health Evaluation (PHE) was conducted to determine the need for Soil Remediation to protect human health. Under all plausible exposure scenarios, it has been determined that the daily intakes of contaminants are below the reference doses, even when exposure to all contaminants are summed. The PHE has determined that no adverse human health threats are posed by the soil contamination. The remedy selected for this site provided for no further remedial actions to be taken on the soils and groundwater at the site. However, to assure that no groundwater contamination has occurred from past releases of hazardous materials, a groundwater quality assessment consisting of two sampling events has been conducted. Post-ROD sampling events revealed that the site poses no threat to the human health or to the environment.

EPA, with the concurrence of the State of Florida, has determined that the Parramore Surplus site poses no significant threat to public health or the environment and therefore, no soil remediation and no further groundwater studies are necessary.

Date: November 9, 1988.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 88-26589 Filed 11-28-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-08; Notice 2]

RIN 2127-AB91

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new requirement for manufacturers to install lap/shoulder belts in all forward-facing rear outboard seating positions in passenger cars, light trucks, multipurpose passenger vehicles (e.g., passenger vans and utility vehicles), and small buses. Rear seat lap/shoulder belts are estimated to be more effective than rear seat lap belts in reducing fatalities and moderate-to-severe injuries. The benefits of this rulemaking would be augmented by the fact that the adoption of safety belt use laws in 32 States and the District of Columbia and the growing public awareness of the benefits of safety belts have brought a general nationwide increase in safety belt usage. Further, six of the States require safety belt use in the rear seats, as well as in the front seats. As safety belt use in the rear seat increases, the greater effectiveness of rear seat lap/shoulder belts should yield progressively larger benefits in terms of reduced fatalities and moderate-to-severe injuries. This proposed requirement would encourage increased rear seat belt use, by providing rear seat occupants with maximum safety protection when they buckle up.

This notice also proposes to establish a requirement for lap/shoulder belts at the driver's seat and any front outboard passenger seat in small buses. Passenger cars and light trucks and light multipurpose passenger vehicles have long been required to provide lap/shoulder belts at front outboard seating positions. Additionally, the front seat is generally a more hostile crash environment than the rear seats. NHTSA has tentatively determined that front seat occupants of small buses should experience the same benefits from lap/shoulder belts that are currently experienced by front seat occupants of light trucks and light multipurpose passenger vehicles. The agency has also tentatively determined that the enhanced effectiveness of lap/shoulder belts should maximize the

likelihood that a driver of a small bus will be able to assist the passengers in getting out of the bus in the event of a crash.

DATES:

Comment Closing Date: Comments on this notice must be received by NHTSA not later than January 30, 1989.

Proposed Effective Dates: If adopted as a final rule, these requirements would apply to passenger cars other than convertibles manufactured on or after September 1, 1989, and to convertible passenger cars, light trucks, multipurpose passenger vehicles and light buses manufactured on or after September 1, 1991.

ADDRESS: Comments should refer to Docket No. 87-08; Notice 2 and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:**Background**

On January 1, 1968, the initial Federal Motor Vehicle Safety Standards took effect. One of those standards was Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), which required the installation of safety belts in passenger cars. Standard No. 208 required the installation of lap/shoulder belts at the driver's and right front passenger's seating positions, and either lap or lap/shoulder belts at every other designated seating position. Another of the initial safety standards that took effect on January 1, 1968 was Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210), which specified location and strength requirements for the anchorages used to hold the safety belts to the passenger car during a crash. Standard No. 210 required passenger car manufacturers to provide anchorages for lap/shoulder belts for each forward-facing front and rear outboard seating position. NHTSA subsequently amended both of these standards to extend their applicability to trucks, multipurpose passenger vehicles (MPV's), and buses. However, when Standard No. 210 was extended to these additional vehicle types, NHTSA did not require manufacturers to provide upper torso (i.e., shoulder belt) anchorages for rear outboard seating positions in those other vehicle types.

All comprehensive and reliable studies of occupant protection in the rear seat from 1968 forward showed that the lap belts installed in the rear seating positions were effective in reducing deaths and injuries. Notwithstanding this evidence, Kathleen Weber and John Melvin, then both associated with the University of Michigan Transportation Research Institute, sought additional protection through submitting a petition for rulemaking with the agency in December 1982. That petition (hereinafter called "the Weber/Melvin petition") asked the agency to require the installation of lap/shoulder belts in the rear outboard seating positions of passenger cars. The petitioners explained that the primary reason for their request was enhancing child safety, by facilitating the use of booster seats in the rear seat. (A booster seat is a platform used to elevate and restrain a child in a vehicle. It may or may not have a frame or any other structural support behind the child's back or head, and generally is designed to be used by children who have outgrown their child seat, but are not old enough to use just the vehicle's belt system. By elevating the child up to four additional inches, some booster seats are designed to ensure that a vehicle's lap belt is properly positioned over the child's pelvis and the vehicle's shoulder belt, if one is available, is properly positioned over the child's chest, instead of the face or neck. Those booster seats that are designed with some type of shield in front of the child are usually designed so that the shoulder belt can be routed in front of the shield on the booster seat, to provide additional upper torso restraint for the child.) As additional support for the requested action, the Weber/Melvin petition asserted that rear seat lap/shoulder belts would provide additional safety protection for adult occupants, as well.

NHTSA denied this petition in 1984 (49 FR 15241). This denial focused primarily on the child safety issues raised by the petitioners. At the time of this denial, the agency was considering a proposal to require the vehicles to include tether anchorage to secure a then-popular type of child restraint. The agency believed this approach would offer greater protection to children than one requiring rear seat lap/shoulder belts. In response to the petitioners' assertion that lap/shoulder belts in rear outboard seating positions could provide some additional safety protection to adults seated there, NHTSA stated that it agreed. However, the agency noted that existing crash data showed that rear seat lap belts already provided

effective protection to rear seat occupants. In addition, NHTSA then estimated that lap/shoulder belts with retractors would cost \$20 more than the lap belts provided at those seating positions in most passenger cars. NHTSA concluded at that time that the additional cost could not be justified based on increased belt usage or belt effectiveness.

In August 1986, another petition was filed with the agency asking that NHTSA require the installation of lap/shoulder belts in rear seats. This petition, filed by the Los Angeles Area Child Passenger Safety Association, again focused on the protection afforded to children riding in motor vehicles. The agency decided to grant the petition and reexamine this issue, because of two new factors. First, many States had adopted safety belt use laws, which led to an increase in belt use in the rear seat. Second, child restraint production had shifted away from those that were designed to have a tether anchored to the vehicle. Accordingly, on June 16, 1987, NHTSA published an advance notice of proposed rulemaking (ANPRM), requesting comments on the need for rulemaking to require lap/shoulder belts in rear seating positions of vehicles (52 FR 22818).

In connection with the ANPRM, NHTSA prepared a preliminary regulatory impact analysis (PRIA) to examine in detail the costs and safety benefits of rear seat lap/shoulder belts. The PRIA showed that rear seat lap belts have been effective in reducing deaths and serious injuries. The agency estimated that the benefits of requiring rear seat lap/shoulder belts would be a reduction of approximately 10 fatalities and 400 serious injuries each year, at 1985 belt usage rates of approximately 10 percent for rear seat occupants. The PRIA estimated that a requirement for lap/shoulder belts at rear outboard seating positions would be \$139 million for passenger cars, \$21 million for light trucks and multipurpose passenger vehicles, and \$100,000 for small buses. The ANPRM noted: "The agency is concerned that such costs are extremely disproportionate to the safety benefits." 52 FR 22819.

The ANPRM asked for comments on these estimates. It also asked for comments on the vehicle manufacturer's plans for installing lap/shoulder belts in rear seating positions, whether any proposed rule should include dynamic testing requirements for rear seat lap/shoulder belts, and whether any proposed rule should make the existing comfort and convenience requirements for front seat belts applicable to rear

seat lap/shoulder belts. Thirty-four commenters responded to the ANPRM, and all of those comments were considered in developing this proposal. The most significant comments are discussed below.

The Need for Additional Requirements

The agency has carefully considered both the comments received in response to the ANPRM, information on the manufacturer's plans to voluntarily install lap/shoulder belts in the rear seats of their vehicles, and the continuing trend of States to enact safety belt use laws. After considering all this information, NHTSA has decided to propose a new requirement that most vehicles be equipped with lap/shoulder belts at each rear outboard seating position.

The agency's estimate of the costs involved with such a requirement has changed substantially since the ANPRM was issued, because of the significant increase in the number of vehicles that will be voluntarily equipped with rear seat lap/shoulder belts. However, NHTSA also believes that the benefits associated with this requirement may be greater than it had previously estimated, for the following reasons. As of this date, 32 States and the District of Columbia have safety belt use laws, an increase of seven in the number of States with belt use laws since the ANPRM was published. As a result of these State laws, the number of people wearing safety belts has increased substantially. For example, when the Secretary of Transportation issued the final decision on the automatic occupant crash protection requirements in July 1984, the safety belt use rate for front seat occupants was 12.5 percent. The ANPRM referred to the 1985 safety belt use rate of 22 percent for front seat occupants. The most recent agency data on safety belt use by front seat occupants shows a 42 percent use rate, for the period of June through August 1987 (NHTSA Docket No. 74-14-CR-710). Hence, belt use by front seat occupants has increased by 30 percentage points, more than tripling the use rate in 1984, over this three year period.

The most recent agency data also show the positive effects that State belt use laws have on belt use. Front seat occupants in States with belt use laws had a 20 percentage point higher belt use rate than did front seat occupants in States without a belt use law (roughly 52 percent vs. 32 percent). As the number of States with belt use laws continues to grow, together with the public awareness of the benefits of wearing safety belts, there is every reason to

believe that the rate of belt use by front seat occupants will continue to increase.

Historically, belt use in the rear seats has been lower than belt use in the front seats. The ANPRM noted that belt use in the rear seats was approximately 2 percent in 1981-1982, and had risen to 10 percent in 1985. The most recent data are from 1987 and show that belt use in the rear seats has risen to 16 percent. Thus, the ANPRM's discussion of the benefits that would be associated with a requirement for rear seat lap/shoulder belts focused primarily on the 10 percent use rate for rear seat belts. However, the agency now believes that belt use in rear seats will increase to levels substantially greater than 10 percent, bringing correspondingly higher benefits for lap/shoulder belts in rear seats.

Although most of the State safety belt use laws that have been enacted require the use of safety belts in front seats only, five of the State laws require both front and rear seat occupants to buckle up. The five States that require rear seat occupants to use their belts are California, Montana, Nevada, Washington, and Wisconsin. Experience with belt use laws applicable to front seat occupants suggests that far more than 10 percent of the rear seat occupants in these States will buckle up. Even in those States that have safety belt use laws, but do not require rear seat occupants to buckle up, it seems likely that people who have gotten into the habit of wearing a safety belt in the front seat will be more likely to wear a safety belt in the rear seat when they are riding there. This suggests that safety belt use in the rear seat should rise above the current 16 percent level. Further, the greater visibility of belt use with lap/shoulder belts, as opposed to lap belts alone, would make it easier for States to enforce safety belt use laws that require belt use in the rear seats.

Further, the agency believes that the State safety belt use laws and the greater public awareness of the benefits of safety belts have resulted in a larger share of the public being familiar with lap/shoulder belts in front seats and getting into the habit of wearing lap/shoulder belts. Both the sense of familiarity and the habit of wearing have been developed with respect to the lap/shoulder belts in the front seat, not the lap belts in the rear seats. These factors may partially explain why belt use is so much lower in rear seats. If people who are familiar with and in the habit of wearing lap/shoulder belts in the front seat find lap/shoulder belts in the rear seat, it stands to reason that they would be more likely to wear those belts when riding in the rear seat. Thus,

the presence of lap/shoulder belts in the rear seat should result in an increase in rear seat belt use. The synergy between increased belt use and increased benefits means that the benefits associated with this rule will be substantially greater because of the anticipated increased use of lap/shoulder belts in the rear seat.

Finally, lap/shoulder belts in the rear seat would provide better protection for children restrained in booster seats. Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) requires that all child restraint systems be certified as complying with the injury protection criterion when held in place by a lap belt only. Accordingly, most booster seats have had to rely on a shield to provide upper torso restraint for the child during Standard No. 213 compliance testing and when used in the seating positions equipped with lap belts. The presence of lap/shoulder belts in rear seating positions would help booster seats installed in rear seats to provide even more effective protection for child occupants, by allowing booster seats to use the shoulder belt to provide additional upper torso restraint.

The agency re-emphasizes that a number of studies, evaluating thousands of cases, show that lap belts in the rear seat are effective in preventing deaths and reducing injuries. NHTSA knows of no comprehensive studies by any person or organization that suggests that rear seat lap belts are anything less than effective. This proposal is *not* suggesting or implying that rear seat lap belts are not effective. Instead, this proposal is based on the agency's tentative conclusion that safety belt use in the rear seats of vehicles will increase and that, as a result of this increase, the benefits of rear seat lap/shoulder belts will be reasonably related to the costs of rear seat lap/shoulder belts.

Many of the vehicle manufacturers that responded to the ANPRM agreed with the ANPRM's statement that the voluntary installation of rear seat lap/shoulder belts by the manufacturers could mitigate the need for a Federal requirement in this area. As a policy matter, the agency has generally concluded that there is no compelling safety need for it to act when vehicle manufacturers are voluntarily taking the desired steps absent any Federal requirement to do so. In these circumstances, rulemaking imposes a burden on the agency by requiring it to develop appropriate requirements, conduct a rulemaking proceeding, and use some of its enforcement budget to monitor compliance. The rule also imposes additional paperwork burdens

on the manufacturers, even though they would take the desired action in any case. All of these burdens are imposed without a commensurate safety benefit for the public, and are therefore unnecessary burdens.

Although most manufacturers either already equip their passenger cars with rear seat lap/shoulder belts or are planning to do so in the very near future, some manufacturers do not have similarly broad plans for their fleets of minivans and light trucks. Further, some manufacturers do not plan to provide this equipment, even in passenger cars. Moreover, the agency has no reliable information that known new entrants to the U.S. motor vehicle market will follow the lead of their competitors in supplying rear seat lap/shoulder belts. Finally, a requirement for rear seat lap/shoulder belts will ensure substantial uniformity of safety performance and comfort and convenience for ease of use. For example, a regulatory requirement will ensure that all such systems have an integrated lap/shoulder belt and retractors. For these reasons, NHTSA has tentatively concluded that it should require rear seat lap/shoulder belts and establish some performance requirements for those belt systems.

Specific Details of this Proposal

1. Seating Positions Covered by Proposal

The ANPRM estimated the costs and benefits by requiring lap/shoulder belts at all rear seating positions in the covered vehicles, at rear outboard seating positions only, and at rear outboard seating positions of the second seat only, for vehicles with more than one rear seat. The agency asked for comments on these estimates and each of these potential installation proposals.

With respect to the request for comments on requiring lap/shoulder belts at rear outboard seating positions, the commenters generally did not believe there would be any technical problems associated with such a requirement. Indeed, the fact that several manufacturers install lap/shoulder belts at rear outboard seating positions in their passenger cars suggests that there are no serious technical problems with such installations. The PRIA for the ANPRM estimated that, for passenger cars, about 90 percent of the benefits estimated for lap/shoulder belts in all rear seating positions would accrue to rear outboard seat occupants. For other vehicle types, about 70 percent of the benefits would accrue to rear outboard seat occupants.

Some commenters did express concerns about a proposed requirement

to install lap/shoulder belts in rear seating positions that were not outboard seating positions. Several manufacturers noted in their comments that the PRIA estimated that it would cost more to install lap/shoulder belts in the rear center seating position of passenger cars than to install lap/shoulder belts at both rear outboard seating positions in cars. Because the PRIA also estimated that the benefits of lap/shoulder belts in rear center seating positions would be substantially lower than at outboard seating positions, these commenters stated that it would be inappropriate to require lap/shoulder belts for rear seating positions that were not outboard seating positions.

Toyota noted in its comments that rear seating positions that are not outboard seating positions are not presently required to even have anchorages for shoulder belts. Hence, according to this comment, structural changes to vehicles would be required. Both Toyota and Volkswagen noted that the rear center seating position is the least-used seating position in cars, according to the 19 city survey sponsored by NHTSA. The American Seat Belt Council stated in its comments that lap/shoulder belts in rear center seating positions had low cost-effectiveness and little field testing. The Automobile Importers of America and several manufacturers alleged that there would be difficulties in locating the anchorage for a rear center seat shoulder belt in vehicles other than passenger car sedans. According to these comments, hatchback or station wagon models of passenger cars and the other vehicle types mentioned in the ANPRM would have to locate anchorages for rear center seat shoulder belts either in the loadspace floor or on the vehicle roof. According to these commenters, these locations would result in disruptions of the vehicle's cargo carrying area or impede the driver's rearward vision.

The agency has tentatively concluded that it should limit the proposed requirement for lap/shoulder belts in rear seats to outboard seating positions only. The agency agrees with those commenters that asserted that there would be more technical difficulties associated with a requirement to install lap/shoulder belts at all rear seating positions, than with a requirement to install lap/shoulder belts only at rear outboard seating positions. Whether or not those difficulties could be overcome, there would be small safety benefits and substantially greater costs if rear seating positions that are not outboard seating positions were required to have lap/

shoulder belts. Therefore, this proposal addresses only rear outboard seating positions.

The term "outboard designated seating positions" is defined at 49 CFR 571.3 as meaning "a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the seating reference point and the shoulder reference point (as shown in Figure 1 of the Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion." Thus, the seating positions next to the aisle on the right hand side of many passenger vans and small buses may not be outboard seating positions, because they may be more than 12 inches from the inside of the vehicle. Accordingly, some aisle seating positions in those vehicles may not be covered by this proposed requirement for rear seat lap/shoulder belts.

2. Types of Rear Seats Covered by This Proposal

This proposal is limited to forward-facing rear outboard seats. The agency considered proposing requirements for all rear outboard seats, but tentatively determined that such a requirement might be overbroad. NHTSA is unaware of any data showing that occupants of center-facing or rear-facing seats would be significantly better protected by lap/shoulder belts than by lap belts. Further, such seats are usually designed to fold away for cargo carrying purposes, which would make shoulder belt anchorage and application especially cumbersome and technically difficult.

Since this proposal is limited to forward-facing rear outboard seats, there might be some uncertainty as to whether the proposed requirements would apply to swivel seats in rear outboard positions. Swivel seats can rotate 360°, and so could be adjusted to face front, center, or rear. NHTSA answered this question for front outboard swivel seats in an April 8, 1988 letter to Mr. Ohdaira of Isuzu Motors. In that letter, the agency explained that S7.1.1 of Standard No. 208 requires safety belts to adjust to fit occupants "with the seat in any position." Because of this language in the standard, the agency noted, "Thus, we believe that a front outboard swivel seat must have lap and upper torso restraints that fit the occupant of the seat while the seat is in any position in which it can be occupied while the vehicle is in motion." (Emphasis in original). This notice proposes that rear outboard seating

positions be subject to S7.1.1 of Standard No. 208. Since this is the same regulatory requirement that was the basis of the agency's conclusion for swivel seats at front outboard seating positions, the agency would reach the same conclusion for rear outboard swivel seats, if this proposal were adopted as a final rule. This notice proposes to add express language to S7.1.1 to clarify this point.

3. Vehicle Types Covered by This Proposal

a. Passenger Cars

This proposal, if adopted as a final rule, would apply to all passenger cars. More people travel in these vehicles than in any other vehicle type. Accordingly, most of the safety benefits anticipated from a requirement for rear lap/shoulder belts would accrue to rear seat occupants in passenger cars. NHTSA anticipates no technical problems will be associated with this proposed requirement, since passenger cars have long been required to have anchorages installed for rear outboard shoulder belts.

Mazda suggested that NHTSA should consider treating convertibles differently from other passenger cars, for the purposes of this proposed requirement. In its comments to the ANPRM, Mazda alleged that, "Interference between the shoulder anchorage and the convertible roof will undoubtedly occur and will be very difficult to adequately reconcile. Accordingly, the only viable option available to convertible manufacturers must be the elimination of rear seating positions."

NHTSA is not persuaded by this comment. In spite of the difficulties perceived by Mazda, the rear outboard seating positions in convertibles are equipped with lap/shoulder belts in 1988 convertible models made by BMW, Mercedes-Benz, and Saab. NHTSA concurs with Mazda's assertion that it will be more difficult to install rear seat lap/shoulder belts in convertibles than in other passenger cars. The greater degree of difficulty for convertibles is a good reason for proposing to allow manufacturers a longer leadtime to install rear seat lap/shoulder belts in convertibles. Accordingly, this notice proposes to allow manufacturers two additional years after other passenger cars are required to be equipped with rear seat lap/shoulder belts before imposing the same requirement for convertibles.

However, the greater degree of difficulty for convertibles is not sufficient to justify proposing to exempt

convertibles from any requirements. The voluntary actions by other convertible manufacturers show that the difficulties in installing rear seat lap/shoulder belts in convertibles can be overcome. The agency does not believe that rear seat occupants of convertibles should be denied the greater safety protection of lap/shoulder belts, simply because greater engineering efforts are required to install those belts in convertibles, compared with sedans or station wagons. Therefore, this proposal treats convertibles just like all other passenger cars, and requires all passenger cars to be equipped with lap/shoulder belts at rear outboard seating positions.

NHTSA acknowledges that convertibles are not required to have lap/shoulder belts installed at front outboard seating positions prior to September 1, 1989. However, as of September 1, 1989, all convertibles must comply with the automatic crash protection requirements of S4.1.2.1 of Standard No. 208. NHTSA gave convertibles a longer leadtime to comply with the front seat occupant protection requirements, by permitting manufacturers to exclude convertibles from their production totals during the phase-in of the automatic crash protection requirements. With the additional leadtime, however, NHTSA determined that there was no reason to treat convertibles any differently than other passenger cars for front seat occupant protection. The agency is proposing to follow the same course in the case of rear seat occupant protection. That is, convertibles will be given more leadtime to comply with the rear seat occupant protection requirements but after that time will be subject to the same rear seat occupant protection standards as all other passenger cars.

b. Multipurpose Passenger Vehicles With a Gross Vehicle Weight Rating of 10,000 Pounds or Less

This vehicle type consists primarily of passenger vans with a seating capacity of 10 persons or less, and utility vehicles and other off-road vehicles. These vehicles are designed to transport passengers and perform some other specialized function. This type of vehicle represents a growing share of the market, so that the estimated safety benefits to rear seat occupants from lap/shoulder belts was greater than any other vehicle type, except passenger cars. Further, these vehicles are frequently purchased because of their greater passenger-carrying capacity. Thus, it is reasonable for the agency to infer that these vehicles will have a

greater-than-average occupancy rate in the rear seats, with accompanying greater-than-average benefits from this proposed requirement. Accordingly, this notice proposes to require lap/shoulder belts in these vehicles.

Several of the commenters to the ANPRM expressed opinions about extending any requirement for lap-shoulder belts at rear outboard seating positions to multipurpose passenger vehicles (MPVs). Chrysler noted its plans to install such belts in MPVs, and supported a requirement for such. The Insurance Institute for Highway Safety (IIHS) recommended that the proposed regulation should initially apply only to passenger cars and MPVs, since rear seat occupants of these two vehicle types would experience almost all of the total benefits estimated from rear seat lap/shoulder belts. Land Rover, a British manufacturer of MPVs, stated that all of its vehicles sold in the United States are already equipped with lap/shoulder belts at the rear outboard seating positions.

On the other hand, Mr. Robert Schlegel, a private citizen, recommended that NHTSA defer any actions on rear seat lap/shoulder belts in MPVs until it can evaluate the effectiveness of those belts in passenger cars. The American Seat Belt Council similarly recommended that the question of rear seat lap/shoulder belts in MPVs not be addressed in this proposal, arguing that the low belt use in the rear seats of these vehicles would result in low cost-effectiveness for such a proposal. Several vehicle manufacturers noted that structural modifications would be needed to allow MPVs to accommodate rear seat shoulder belts. As previously noted, Standard No. 210 does not currently require MPVs to have anchorages installed for rear seat shoulder belts. Finally, Ford stated that it plans to install rear seat lap/shoulder belts in its MPVs, but that it was uncertain whether it could develop a practicable rear seat shoulder belt for its Bronco line of MPVs.

The suggestions that the agency should concentrate initially on only passenger cars, the vehicle type with the highest benefits, and later extend the requirement for rear seat lap/shoulder belts to MPVs if those belts were effective in passenger cars, were carefully considered by the agency. For the following reasons, NHTSA has decided to include MPVs in this proposal. As noted above, MPVs, especially passenger vans, frequently have rear seat occupants. In fact, passenger vans, especially the newer "mini-vans," are frequently purchased to

accommodate, and used for, the same family transportation purposes for which station wagons were used exclusively in the past. Accordingly, only passenger cars have higher estimated benefits from rear seat lap/shoulder belts.

NHTSA concurs with the ANPRM commenters that noted that structural changes will be necessary to permit MPVs to be equipped with rear seat shoulder belts. However, these structural changes do not generally pose major technical difficulties, as evidenced by the rear lap/shoulder belts installed in 1988 vans manufactured by General Motors, Toyota, and Volkswagen, and 1988 off-road vehicles manufactured by Isuzu, Range Rover, and Toyota. The agency does not question that there may be some difficulties with installing rear lap/shoulder belts in some particular models, such as the Ford Bronco, but NHTSA has no reason to believe that these difficulties cannot be overcome. Since rear seat lap/shoulder belts in MPVs would offer greater safety benefits than any other vehicle type except passenger cars, and there are no extraordinary technical problems associated with the installation of such belts in MPVs, NHTSA has decided to propose to require the installation of those belts in MPVs. As was the case for convertibles, this notice proposes to allow manufacturers a longer period of time before requiring rear seat lap/shoulder belts in MPVs than it would allow passenger cars other than convertibles. The leadtime issue is discussed more fully later in this preamble.

c. Light Trucks and Small Buses

The light truck category consists primarily of extended cab pickup trucks with a rear seat in the cab and cargo vans with some limited rear seat positions. Light trucks are designed primarily to transport property, as evidence, for example, by having more cargo room than passenger-carrying space (cargo vans), or by having an open bed for hauling cargo (pickups), or transport special purpose equipment.

The small bus category consists primarily of vehicles that are passenger vans with more than 10 seating positions. In most other respects, small buses are very similar to passenger vans. The vehicles are designed to transport passengers in greater numbers than other passenger-carrying vehicles.

NHTSA acknowledges that the estimated benefits that would accrue to rear seat passengers in both light trucks and small buses from lap/shoulder belts at outboard seating positions are much

less than for passenger cars and MPVs. However, NHTSA has tentatively determined that these lesser benefits may reflect the low production volume of these vehicles, rather than an inherently lower risk to rear seat occupants. Since only about 4,000 small buses are produced annually, and since most light trucks do not have rear seating positions, the injuries and fatalities to rear seat occupants of small buses and light trucks predictably will be far less in absolute numbers than the injuries and fatalities to rear seat occupants of passenger cars and MPVs. Thus, the agency acknowledges that its accident data for rear seat occupants reflect relatively small numbers of fatalities and injuries to rear seat occupants of small buses and light trucks compared to passenger cars and MPVs.

On a per rear outboard seat occupant basis, however, the agency believes that the benefits for rear seat occupants of small buses and light trucks are probably comparable to the benefits for rear seat occupants of standard passenger vans. Indeed, common sense and knowledge in this area suggest that a person riding in a rear seating position in a cargo van (classified as a light truck) or a passenger van with more than 10 seating positions (classified as a small bus) should be afforded the same level of protection as would be afforded when riding in a rear seating position in a passenger van with 10 or fewer seating positions (classified as an MPV). With respect to pickup trucks that have rear seating positions, the agency has no reason to believe that occupants of those seats experience any lesser benefits from lap/shoulder belts than would be experienced by rear seat occupants in comparably sized passenger vans. Since the benefits on a per vehicle basis would be similar to those for MPVs, this notice proposes to establish a requirement that light trucks and small buses be equipped with lap/shoulder belts at all rear outboard seating positions. Manufacturers would be allowed the same leadtime for installations in these vehicles as is proposed for MPVs.

Blue Bird Body Company (Blue bird), a school bus manufacturer, commented that a requirement for rear seat lap/shoulder belts on small school buses would create a conflict between applicable standards for small school buses. This conflict would arise, according to the commenter, because the only anchorage location for shoulder belts for center and aisle seats would be the seat back itself. Blue Bird asserted that the seat strength necessary to

comply with Standard No. 210's anchorage strength requirements would force the seat back to no longer comply with Standard No. 222's limits on seat strength. This comment is now moot since this proposal requires rear seat lap-shoulder belts only at outboard seating positions. Outboard anchorages can be located on the vehicle side structure, if desired, instead of the seat back, thereby eliminating any alleged potential conflicts for school bus manufacturers.

NHTSA acknowledges that there is currently no requirement for small buses to be equipped with lap/shoulder belts at front outboard seating positions. The agency notes that the front seats generally present a more hostile crash environment than the rear seats, because front seat occupants have the steering wheel, dash panel, windshield, and the like in front of them, instead of seat backs. Hence, these occupants would seem likely to experience even greater benefits from the increased effectiveness of lap/shoulder belts than rear seat occupants. A lap/shoulder belt for the driver would assist the driver in maintaining control of the vehicle during crash avoidance maneuvers. The greater effectiveness of lap/shoulder belts should also maximize the chances of the driver being able to assist the bus passengers out of the bus in the event of a crash. As noted above, the small bus category consists primarily of passenger vans that have more than 10 seating positions and that small buses are in most other respects similar to passenger vans. There is no obvious reason to require passenger vans with 10 or fewer seating positions to have lap/shoulder belts at front outboard designated seating positions, and not require passenger vans with 11 or more seating positions to comply with the same requirement. On a per front seat occupant basis, the benefits for front seat occupants should be comparable.

For these reasons, this notice proposes that small buses also be required to have lap/shoulder belts at all front outboard seating positions. The agency believes that most small buses are already so equipped, so minimal costs should be associated with this proposal. Structural modifications will be necessary for those small buses that are not already equipped with front outboard lap/shoulder belts, however. To accommodate the legitimate leadtime needs of these small buses, this proposed requirement would apply to small buses manufactured on or after September 1, 1991. Comments are invited on the agency's tentative determination that there is a safety need

for this requirement, the number of small buses that are not currently equipped with lap/shoulder belts at front outboard seating positions, and whether the proposed leadtime is sufficient to make any necessary structural changes to small buses.

4. Vehicle Types NOT Covered by This Proposal

a. Vehicles with a Gross Vehicle Weight Rating of More Than 10,000 Pounds

NHTSA has traditionally used gross vehicle weight ratings as dividing lines for the purposes of applying occupant crash protection standards. These groupings reflect the differences in the vehicles' functions and crash responses and exposure. This proposal would also use such a dividing line, by addressing only vehicles with a gross vehicle weight rating of 10,000 pounds or less.

b. Motor Homes

Some of the commenters to the ANPRM suggested that motor homes should be exempted from the rear seat lap/shoulder belt requirements. The Recreational Vehicle Industry Association (RVIA) commented that recreational vehicles have many diverse seating configurations, such as side-facing sofas, dinettes, and barrel chairs that lock in a side-facing position. RVIA argued that it would be very complex and expensive to install lap/shoulder belts for these rear seating positions. Additionally, RVIA argued that the resulting "clutter" of lap/shoulder belts would impede movement throughout a recreational vehicle and otherwise interfere with its "residential functions." Fleetwood Enterprises, a manufacturer of motor homes, commented that lap/shoulder belts in the rear of its products "may create usability and human factor concerns which are not now in the product."

This agency has long said that rear seating positions in motor homes, including side facing sofas and barrel chairs and dinette chairs, are designated seating positions. Accordingly, section S4.2.2 of Standard No. 208 requires those seating positions to be equipped with lap belts, if the vehicle has a gross vehicle weight rating of 10,000 pounds or less. Thus with respect to the need for occupant protection, the agency has heretofore treated sofas, dinette chairs, etc., just like standard bench seats in the rear of MPVs.

However, the agency believes there is some merit to the comments that lap/shoulder belts at these seating positions might interfere with the seating positions' ability to perform residential functions when the vehicle is not in

motion. This effect could be mitigated by installing lap/shoulder belts that are integrated into the seats. Nevertheless, the agency has tentatively concluded that shoulder belts at rear seating positions in motor homes might interfere with the residential purposes of those seating positions, especially for low back and/or sofa-type seats. Such possible interference might be necessary, if NHTSA had evidence indicating that significant benefits would result from lap/shoulder belts at these positions. However, NHTSA has no accident or other data that would allow it to project any significant benefits from rear seat lap/shoulder belts in motor homes. Therefore, this notice excludes motor homes from its proposed requirements.

For the purposes of this rulemaking, the agency is proposing a definition of "motor home" to permit it and the public to distinguish objectively between motor homes and van conversions that do not qualify as motor homes. A "motor home" would be defined as "a motor vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and sink; and a separate 110-125 volt electrical power supply and/or an LP gas supply." This proposed definition has been derived from the definition of "motor home" specified in the 1987 version of the Uniform Traffic Code. Vehicles that do not include at least four of the listed facilities would not be considered motor homes. The public is specifically invited to comment on whether this proposed definition is broad enough to include all vehicles commonly called "motor homes," yet narrow enough to exclude van conversions that would not ordinarily be termed "motor homes."

5. Retractor Types Required for Rear Seat Lap/Shoulder Belts

NHTSA's decision to proceed with a proposal to require rear seat lap/shoulder belts is based on the agency's tentative conclusion that these types of belts will increase belt use in the rear seats. NHTSA has already established performance requirements for the comfort and convenience of lap/shoulder belts installed at front outboard seating positions in vehicles with a gross vehicle weight rating of 10,000 pounds or less; 50 FR 46056, November 6, 1985. The reasons for establishing these requirements were to

enhance belt use by vehicle occupants. In the notice establishing these requirements, NHTSA said:

Automatic locking retractors are inconvenient to use since they must be extended in a single continuous movement to a length sufficient to allow buckling or they will lock. They also tend to tighten excessively under normal driving conditions, sometimes making it necessary to unbuckle and refasten the lap belt to relieve pressure on the pelvis and abdomen. Neither of these problems exists with the emergency locking retractor, which allows occupant movement without tightening and locks only upon rapid occupant movement, vehicle deceleration, or impact. 50 FR 46057.

For these reasons, section S7.1.1.3 of Standard No. 208 requires that only emergency locking retractors (ELR) be used on lap/shoulder safety belts installed at front outboard seating positions of vehicles manufactured on or after September 1, 1986.

The agency has tentatively determined that these same considerations apply with equal force to the lap/shoulder belts proposed to be required by this notice. If these lap/shoulder belts do not increase rear seat belt use, the anticipated benefits from those belts would be significantly reduced. Hence, this notice proposes to apply the requirements for ELR's set forth in S7.1.1.3 to the lap/shoulder belts to be required by this proposal. The agency specifically invites comments on the costs of converting to ELR's at rear outboard seating positions. Manufacturers are requested to submit an estimate of the number of vehicles by vehicle type (passenger car, MPV, light truck, and small bus) that will have to be changed from ALR's to ELR's. The public is also invited to submit their own estimates of the net costs of making this change and the net weight increase (if any) that would result from this change.

Two of the commenters to the ANPRM raised questions about the compatibility of ELR's and child restraint systems. Cosco, a child restraint manufacturer, asserted in its comments that ELR lap/shoulder belt systems are not compatible with child car seats. Cosco also expressed its opinion that a lap/shoulder belt with an ELR for the shoulder belt and an automatic locking retractor (ALR) for the lap belt would be compatible with child car seats, as would ELR lap belts that convert to ALR when fully extended, and suggested that a proposal require either of these for rear seat lap/shoulder belts. Cosco commented that this rule should consider the compatibility between child restraints and vehicle safety belts thoroughly in this

rulemaking. The Physicians for Automotive Safety also raised the same points in its comments, and recommended that any ELR lap belts convert to ALR when fully extended, as installed on some current models of General Motors' vehicles.

NHTSA considered this question in detail in the 1985 rule requiring ELR's for front outboard seating positions. The alleged problem of incompatibility between child car seats and ELR's is based on the fact that the ELR locks only upon rapid occupant movement, vehicle deceleration, or impact. ALR's lock into position upon adjustment. The agency said:

Child restraint manufacturers stated that some restraint devices, when positioned by safety belt systems which are adjusted by ELR's, become unstable when occupied by very active children. Agency testing of child restraint devices under conditions of low-speed braking and vehicle maneuvers indicates that, although improvements in belt systems could improve the stability of these devices, there are no data to show that low-speed movement of child safety seats is affecting the safety performance of child restraint devices in motor vehicle accidents. (Docket No. 80-18-GR-004).

Because the agency's research did not show that low-speed movement of the seats is actually reducing the effectiveness of child restraints in accidents, and because after-market locking devices are available which achieve the same goal, it has decided not to adopt a manual locking requirement for ELR's at this time. The agency will continue to monitor the potential problems associated with the restraint of child restraint devices by ELR safety belt systems and consider whether to address these problems in future rulemaking actions. 50 FR 46056, at 46057; November 6, 1985.

The aftermarket locking devices to which that notice referred are called "locking clips." Locking clips can prevent movement of belts equipped with ELR's. Cosco stated in its comments that,

While locking clips make this type of belt (i.e., one with an ELR for the lap belt) compatible with child car seats, locking clips are frequently not used.

NHTSA has thoroughly considered this issue again in connection with this proposal. NHTSA believes that rear seat belts can and should provide comfort and convenience for adult users and provide effective protection for children. While the agency welcomes public comments setting forth new information developed since the 1985 rule, the agency has tentatively determined that effective protection for both children and adults can be achieved without proposing any additional requirements for lap belt retractors.

Additionally, the agency has heard reports that some current combinations of child restraints and rear safety belt systems may be incompatible. For example, some have said that a rear set lap/shoulder belt may be too short to fit around a child safety seat. NHTSA is also aware that a task force of the Society of Automotive Engineers (SAE) has developed a draft test procedure involving a test fixture, to assist both vehicle manufacturers and child seat manufacturers to prevent any future incompatibilities. The agency specifically solicits comments on the current magnitude of the incompatibility problem, whether a requirement for integrated lap/shoulder belts might exacerbate this problem, and whether NHTSA should include in any final rule on this proposal a minimum length requirement for rear seat belts, or some other performance requirements that will ensure that child restraints can be used in all passenger-carrying vehicles.

After a child has outgrown a car seat, the child can be protected by placing him or her in a type of child restraint called a "booster seat." Booster seats are often designed to use vehicle shoulder belts to provide additional upper torso restraint. Thus, children protected by those types of booster seats should experience some incremental safety benefits from this proposal to require lap/shoulder belts in rear outboard seating positions.

However, NHTSA acknowledges that many parents do not use booster seats to protect their children after the children have outgrown car seats, although booster seats provide better protection, by using the shoulder belt to offer upper torso support, than lap belts alone. Many of these children are not yet big enough to use the shoulder belt in the rear seat, even when they slide as far inboard as possible, since it could pass over their neck or face. When a shoulder belt passes over a child's face or neck, the agency recommends that a booster seat be used for the child. If a booster seat is not used, the shoulder belt should be routed behind the child, and the child should be protected only by the lap belt. Once the child is large enough for the shoulder belt to fit properly, the child should wear the shoulder belt for maximum safety protection.

Accordingly, the agency believes that this proposal for rear seat lap/shoulder belts would offer benefits for children riding in some types of booster seats, would have no positive or negative effects on children riding in most designs of car seats and children that are too small to use shoulder belts, and

would offer older children the same incremental safety protection that would be afforded adult rear seat occupants. The agency specifically requests comments as to whether its tentative assessment of the impacts of this proposed rule on child rear seat occupants is correct.

6. The Requirements With Which Rear Seat Lap/Shoulder Belts Must Comply

The ANPRM asked commenters to provide data on testing in which test dummies were restrained by lap/shoulder belts in the rear seat. This request for comments reflected NHTSA's belief in the desirability of crash testing to determine compliance with occupant protection requirements. Crash testing is the most representative surrogate measure of the protection afforded vehicle occupants during an actual crash. Accordingly, Standard No. 208 was recently amended to provide that manual lap/shoulder belts installed in the front outboard seating positions of most light trucks and MPVs must meet the occupant protection requirements applicable to automatic restraint systems in cars, beginning September 1, 1991. The standard also provides that, if the automatic restraint requirement is rescinded, all passenger cars with manual lap/shoulder belts installed in the front outboard seating position must meet dynamic testing requirements, beginning September 1, 1989. Additionally, passenger cars with air bags at the driver's position are permitted to have manual lap/shoulder belts at the right front passenger's position until September 1, 1993, but those manual belts must meet the automatic restraint occupant protection requirements, beginning September 1, 1989.

Several commenters to the ANPRM alleged that there were a number of technical issues that must be resolved before any requirement for crash testing of rear seat belts could be implemented. For example, Ford argued that the 50th percentile adult male dummy (the specified size for the test dummy) would not be representative of the typical rear seat occupant, more than half of whom are teenagers and younger children. Ford also argued that the 50th percentile adult male dummy may not readily fit in many rear seats with the front seat in the mid-range adjustment position. Even if that dummy would fit in the rear seats of the vehicle being tested, Ford noted that there is currently no procedure for positioning a test dummy in any rear seating positions. Ford asserted that past experience with positioning test dummies in front seating positions suggests that considerable time and

effort will be needed to develop a rear seat positioning procedure that accurately and repeatedly positions dummies in rear seats.

General Motors (GM) stated its belief that the current occupant injury limits specified in Standard No. 208 can be met in a 30 mile per hour barrier crash test by lap/shoulder belt restrained dummies in rear outboard seats. GM submitted some confidential testing results to support this belief. Notwithstanding this belief, GM argued that any crash testing requirement for rear seat occupant protection would not be practicable, because the cost of certification would be approximately doubled, if rear seats were tested separately. If rear seats were required to be tested simultaneously with front seat automatic restraints, GM suggested that it might have to retest all vehicles it had previously certified as complying with the front seat requirements, to ensure that the presence of instrumented dummies in the rear seat did not affect the measured crash responses of the dummies in the front seat.

A number of other manufacturers commented that a requirement for crash testing would move the United States farther away from harmonization with the European requirements. These commenters urged the agency to adopt a requirement for rear seat belts that was harmonized with ECE 14, which does not require vehicle dynamic testing.

NHTSA agrees with Ford and GM that neither dummy positioning procedures nor testing procedures for rear seat occupants have yet been developed. In addition, when NHTSA conducts its Standard No. 208 compliance testing for front seat automatic restraints, it generally removes the rear seats to allow it to achieve more easily the specified weight distribution and to more readily accommodate additional instrumentation. Additionally, the need for crash test verification of a vehicle's occupant protection in rear seating positions may be less than in front seating positions. The rear seating positions offer a relatively more benign crash environment, because only seat backs are in front of the occupant, not a steering wheel, instrument panel, and so forth encountered by front seat occupants. Therefore, this notice does not propose that safety belts for rear seat occupants be subject to any additional testing requirements. Instead, those safety belts would continue to be required to comply with the requirements of Standard No. 209, in the case of the belt assemblies, and Standard No. 210 in the case of the anchorages.

The decision not to propose any crash testing requirements leads NHTSA to also propose that rear lap/shoulder belts must be integral, i.e., the lap belt must not be detachable from the shoulder belt. Standard No. 208 permits manufacturers to install manual belt systems in front outboard seating positions of some percentage of their passenger cars until September 1, 1989. Section S4.1.2.3.1 specifies that manual belts installed at front outboard seating positions must be either (a) integral lap/shoulder belts or (b) crash-tested lap belts such that the car complies with the occupant protection requirements when test dummies are restrained only by the lap belts. In practice, all vehicles have complied with this option by installing integral lap/shoulder belts. NHTSA believes it is appropriate to extend the requirement for integral lap/shoulder belts to those that would be required in rear outboard seats under this proposal.

Only one commenter to the ANPRM addressed the issue of whether lap/shoulder belts in the rear should be required to be integral. Ford stated that rear seat lap/shoulder belts should be nonintegral for several reasons. First, Ford commented that a large percentage of rear seat occupants are subteen children for whom shoulder belt use may not be appropriate because of their size. Second, Ford commented that most of its van-type MPV's are equipped with readily removable seats. Ford stated that the lap belts for these seats are mounted on the seat frame so that the belts are removed along with the seats. However, Ford believes that the seat frames cannot be designed to provide the anchorage for both lap and shoulder belts. Hence, Ford suggested that nonintegral lap/shoulder belts be permitted, so that it could continue to anchor lap belts on the readily removable seats in MPV's.

The agency does not believe that either of these points is sufficiently persuasive to permit nonintegral lap/shoulder belts to be installed under this proposed rule. Nonintegral shoulder belts require the occupant to separately buckle a lap belt and a shoulder belt. The agency long ago determined that nonintegral shoulder belts result in a lower use rate for shoulder belts. This lower use rate means that nonintegral shoulder belts offer safety benefits significantly below the level estimated for integral shoulder belts. Thus, Standard No. 208 has required lap/shoulder belts installed at front outboard seating positions to be integral for all cars manufactured on or after September 1, 1973 (37 FR 3911; February 24, 1972).

NHTSA does not disagree with Ford's contention that, for children that are too small to wear a shoulder belt, it would probably be more convenient to just detach the shoulder belt from the lap belt instead of routing the integral shoulder belt behind them. However, the convenience of detachability would also result in lower use of the shoulder belt in general. Lower use of shoulder belts than estimated would yield correspondingly lesser benefits than estimated.

Ford's example of the convenience of nonintegral shoulder belts for the readily removable seats in MPV's is another particular situation in which a nonintegral shoulder belt would be more convenient for an occupant. Again, however, the detachability would lead to lower shoulder belt use and lower safety benefits. The agency also believes that manufacturers are capable of designing an integral lap/shoulder belt system that would be nearly as convenient as a nonintegral shoulder belt in MPV's with readily removable seats. For instance, a shoulder belt that is readily detachable at the anchorage could be used for the outboard seating positions.

7. Comfort and Convenience

The ANPRM noted that in November 1985, the agency had amended Standard No. 208 to establish a new set of performance requirements aimed at making safety belts easier to put on and more comfortable to wear. Several of those performance requirements, such as the requirements in S7.4.6 that are designed to prevent safety belts from slipping between the seat cushions, apply to both the front and rear seats. Thus, those requirements would apply to rear seat lap/shoulder belts without any additional amendments in this proposal.

However, the ANPRM also noted that some of the performance requirements apply only to automatic or manual lap/shoulder belts installed in the front seat of vehicles. For example, S7.4.3 limits the pressure that can be exerted on an occupant by a shoulder belt, but applies only to front seats. The ANPRM asked for comments on whether the safety belt comfort and convenience requirements that apply to front seat manual lap/shoulder belts should be extended to apply to rear seat lap/shoulder belts.

The American Seat Belt Council commented that, "Considerations for comfort and convenience of seat belts should apply equally in front or rear seat applications. The actual requirements will not necessarily be identical but will rather be appropriate analogous requirements." On the other hand, many of the manufacturers

commented that the comfort and convenience requirements in S7.4 of Standard No. 208 depend on the use of a properly positioned test dummy in the seating position, and that no dummy positioning procedures had been proposed for rear seating positions. The manufacturers commented that several different factors would have to be considered in developing dummy positioning procedures for rear seating positions, because the dummies are not as flexible as human occupants.

The purpose of the comfort and convenience requirements in Standard No. 208 is to promote increased safety belt use by eliminating objectionable or bothersome characteristics associated with some safety belt system designs. NHTSA believes that this purpose is equally applicable and appropriate for rear seating positions. However, the commenters were correct in noting that compliance with S7.4.2 through S7.4.5 is determined with reference to a test dummy. The agency believes that a properly positioned dummy is the best surrogate measurement of a belt system's comfort and convenience for actual occupants. Other surrogate measurements could be used, such as requirements for performance at a specified percentage of a belt's full extension or by reference to a zone around a seating position. However, NHTSA has not yet developed any alternative surrogate measurements for comfort and convenience in rear seating positions. As is the case with crash testing requirements discussed above, the agency does not believe it would be appropriate to delay this rulemaking to allow the agency to develop a full set of comfort and convenience requirements.

The performance requirements in S7.4.6, *Seat belt guides and hardware*, currently apply to all manual seat belt assemblies, whether installed in front or rear seats. This notice does not propose to exempt rear seat lap/shoulder belts from these requirements. Hence, they will also apply to manual lap/shoulder belts installed in compliance with this proposed rule.

One remaining issue in this area relates to tension-relieving devices on rear seat lap/shoulder belts. The agency has repeatedly stated that the added potential to improve belt fit and the added comfort of shoulder belts equipped with tension-relieving devices is desirable in certain circumstances, because those features could serve to enhance proper belt use. See, e.g., 50 FR 46056; November 6, 1985. However, the agency has also expressed its concern that excessive slack could compromise belt effectiveness. On balance, the agency concluded that tension-relieving

devices should continue to be permitted on belt assemblies, but that certain special conditions (i.e., those specified in S7.4.2 of Standard No. 208) should apply to vehicles that had belt assemblies at front outboard seating positions that were equipped with tension-relieving devices, so as to reduce the likelihood of misuse.

NHTSA believes that the same considerations should apply to rear outboard seating positions that have belt assemblies equipped with tension-relieving devices. The requirements of S7.4.2 for front outboard seating positions that have belt assemblies equipped with tension relieving devices are:

1. The vehicle owner's manual must include an explanation of how the tension-relieving device works and recommend a maximum amount of slack that should be introduced into the belt under normal circumstances (S7.4.2(b));
2. The vehicle must comply with the injury criteria specified in S5.1 of Standard No. 208 during a barrier crash test with the shoulder belt webbing adjusted to introduce the maximum amount of slack recommended by the manufacturer (S7.4.2(a)); and
3. The vehicle must have an automatic means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device (S7.4.2(c)).

The second requirement listed above cannot be applied to rear seat lap-shoulder belts equipped with tension-relieving devices at this time, because the agency is not yet in a position to propose rear seat dummy positioning procedures. However, this notice proposes to apply the other two requirements listed above to rear seat lap/shoulder belts equipped with tension-relieving devices. As explained above, the agency believes that the need for crash testing of rear seating positions may be less compelling than for front seating positions, because the rear seat is generally a more benign crash environment. Even absent a crash testing provision, the agency has tentatively concluded that requirements that information on proper use of rear seat tension-relieving devices be provided in the owner's manual and that any slack be automatically cancelled under certain conditions will adequately serve to minimize the likelihood of misuse of tension-relieving devices on rear seat belt assemblies. Given the importance of increasing rear seat belt use, this notice proposes to permit tension-relieving devices on rear seat lap/shoulder belts subject to these two requirements, and requests comments on this issue. NHTSA is particularly

interested in learning commenters' views as to whether the absence of a dynamic testing requirement for tension-relieving devices in the rear seat might permit a net degradation of safety because of occupant misuse of the devices.

8. Relationship of This Proposal to Standard No. 210

Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210), establishes requirements for belt assembly anchorages, to ensure that belt assemblies will provide effective occupant protection. Section S4.1.1 of Standard No. 210 provides that seat belt anchorages for a Type 2 seat belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars other than convertibles, and for each designated seating position for which a Type 2 seat belt assembly is required by § 571.208 in vehicles other than passenger cars.

The Type 2 seat belt assembly to which the Standard refers is a lap/shoulder belt. Hence, all passenger cars other than convertibles are already required to provide anchorages for a lap/shoulder belt at forward-facing rear outboard seating positions. Hence, passenger cars other than convertibles would only be required to have seat belt assemblies installed on existing anchorages to comply with this proposed rule.

Convertibles are currently exempted from this requirement in Standard No. 210. As explained above, NHTSA is proposing to require that convertibles comply with this proposed requirement for rear seat lap/shoulder belts. This requirement would not achieve the anticipated benefits if those lap/shoulder belts are not effectively anchored to the convertible. Hence, this notice proposes to amend Standard No. 210 to delete the existing exemption for convertibles from rear seat lap/shoulder belt anchorages.

S4.1.1 of Standard No. 210 would automatically require anchorages for rear seat lap/shoulder belts in all other vehicle types covered by this proposal, since it requires such anchorages when Standard No. 208 requires lap/shoulder belts. This notice proposes to amend Standard No. 208, so there is no need to propose to amend Standard No. 210 as it applies to these vehicle types.

9. Proposed Timing for Applying These Requirements to Vehicle Types

As explained above, it would be a relatively simply matter for manufacturers of passenger cars other than convertibles to comply with this

proposed requirement for rear seat lap/shoulder belts, since those vehicles are already required to be equipped with anchorages for such belts. The only additional steps that would be needed for these cars would be the installation of the lap/shoulder belt assemblies. While some time may be needed to change the production process to accomplish such installations, that time should not be very long. This is particularly true because so many manufacturers are already planning to have rear lap/shoulder belts in their 1990 model year cars. Accordingly, this notice proposes that the requirements for rear seat lap/shoulder belts in passenger cars other than convertibles apply to cars manufactured on or after September 1, 1989.

In the case of convertibles and the other vehicle types covered by this proposal, it would not be so relatively simply to comply with these proposed requirements. Since these vehicles are not currently required to have anchorages for rear seat lap/shoulder belts, those anchorages would have to be installed. In many cases, such installations would require structural changes to the vehicles. NHTSA recognizes that it would be necessary to give the manufacturers sufficient time to make the engineering and design changes necessary to install rear lap/shoulder belts. Some of the commenters to the ANPRM pointed out difficulties that would be presented for existing designs of vehicle models in complying with a requirement for rear seat lap/shoulder belts. To accommodate these legitimate needs, while ensuring that rear seat lap/shoulder belts would be available as soon as practicable, this notice proposes that a final rule apply to convertible passenger cars and the other vehicle types discussed in this notice manufactured on or after September 1, 1991.

Economic and Other Impacts Associated With This Proposal

NHTSA has analyzed this proposal and determined that it is not "major" within the meaning of Executive Order 12291. The information currently available to the agency about the manufacturers' plans to voluntarily install rear seat lap/shoulder belts is that 99.4 percent of all cars will have those belts installed by the dates proposed in this rule, that 94.4 percent of utility vehicles will have rear seat lap/shoulder belts voluntarily installed by the proposed dates, 98.0 percent of compact vans will have rear seat lap/shoulder belts installed by the proposed dates, and 100 percent of light trucks, standard vans, and small buses will

have rear seat lap/shoulder belts installed by the proposed dates. The manufacturers of these vehicles have chosen to install rear seat lap/shoulder belts absent any regulatory requirement to do so, so the costs of those rear seat lap/shoulder belts are not treated as a cost attributable to this rule. The costs to manufacturers to install rear seat lap/shoulder belts in those vehicles that would not have these belts if this rule is not made final are estimated to be \$1.5 million. This is well below the \$100 million costs that are needed to classify a rule as "major" for the purposes of Executive Order 12291.

This proposal is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the public interest in this proposal. In accordance with the requirements of the Department's regulatory policies and procedures, a Preliminary Regulatory Evaluation (PRE) has been prepared for this proposal, and a copy of the PRE has been placed in the public docket for this rulemaking action. A copy of the PRE may be obtained by writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590.

Additionally, the agency has analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. Based on this analysis, I hereby certify that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities. Few, if any, of the vehicle manufacturers qualify as small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. The proposed requirements would not affect the manufacturing process of any safety belt manufacturers that are small entities, nor will it significantly affect the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant effect on the human environment, if it were adopted as a final rule.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget (OMB) has already approved NHTSA's requirement that instructions appear in a vehicle owner's manual concerning the proper use of any tension-relieving devices installed at front outboard seating positions in cars (OMB #2127-0541). However, this proposal would expand the scope of that requirement to apply to rear outboard seating positions of cars and other vehicle types. This expansion is considered to be an information collection requirement, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, this proposed requirement will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on this proposed information collection requirement should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments

received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR §§ 571.208 and 571.210 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.1.4 of Standard No. 208 would be revised to read as follows:

S4.1.4 Passenger cars manufactured on or after September 1, 1989.

S4.1.4.1 Except as provided in S4.1.5 and S4.1.4.2, each passenger car manufactured on or after September 1, 1989 shall comply with the requirements of S4.1.2.1. Until September 1, 1993, each car whose driver's designated seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front designated seating position is equipped with a manual Type 2 seat belt that meets the requirements of S5.1, with the Type 2 seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.4.2 Each passenger car manufactured on or after September 1, 1989 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated

seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

3. S4.1.5.1 of Standard No. 208 would be revised to read as follows:

S4.1.5.1 If the Secretary of Transportation determines, by not later than April 1, 1989, that State mandatory safety belt usage laws have been enacted that meet the criteria specified in S4.1.5.2 and that are applicable to not less than two-thirds of the total population of the 50 States and the District of Columbia (based on the most recent Estimates of the Resident Population of States, by Age, Current Population Reports, Series P-25, Bureau of the Census), each passenger car manufactured under S4.1.3 or S4.1.4 on or after the date of that determination shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3. If such a determination is made, each passenger car manufactured on or after September 1, 1989 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR § 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

4. A new S4.2.4 would be added to Standard No. 208, to read as follows:

S4.2.4 Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000 pounds or less. Each truck and each multipurpose passenger vehicle, except a motor home, manufactured on or after September 1, 1991 that has a

gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR § 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard. As used in this section, "motor home" means a motor vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and sink; and a separate 110-125 volt electrical power supply and/or an LP gas supply.

5. S4.4 of Standard No. 208 would be amended by adding a new S4.4.3 to read as follows:

S4.4 Buses.

S4.4.3 Buses manufactured on or after September 1, 1991.

S4.4.3.1 Each bus with a gross vehicle weight rating of more than 10,000 pounds shall comply with the requirements of S4.4.2.1 or S4.4.2.2.

S4.4.3.2 Each bus with a gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at the driver's designated seating position and at every forward-facing outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR § 571.209) and with S7.1 and S7.2 of this standard. The lap belt portion of a Type 2 seat belt assembly installed at the driver's seating position shall include an automatic locking retractor, which retractor shall not retract webbing to the next locking position until at least $\frac{3}{4}$ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any

webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

6. S7.1.1 of Standard No. 208 would be revised to read as follows:

S7.1 Adjustment.

S7.1.1 Except as specified in S7.1.1.1 and S7.1.1.2, the lap belt of any seat belt assembly furnished in accordance with S4.1.1 and S4.1.2 shall adjust by means of an automatic locking retractor that complies with § 571.209 to fit persons whose dimensions range from those of a 50th percentile 6-year-old child to those of a 95th percentile adult male and the upper torso restraint shall adjust by means of an emergency locking retractor or a manual adjusting device that complies with § 571.209 to fit persons whose dimensions range from those of a 5th percentile adult female to those of a 95th percentile adult male, with the seat in any position and the seat back in the manufacturer's nominal design riding position. However, an upper torso restraint furnished in accordance with S4.1.2.3.1(a) shall adjust by means of an emergency-locking retractor that complies with § 571.209. In the case of a swivel seat, the seat shall comply with the above requirements with the seat in any position in which it can be occupied while the vehicle is in motion and with the seat back in the manufacturer's nominal design riding position.

§ 571.210 [Amended]

7. S4.1.1 of Standard No. 210 would be revised to read as follows:

S4.1.1 Seat belt anchorages for a Type 2 belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars other than convertibles and for each designating seating position for which a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR § 571.208) in vehicles other than passenger cars. Seat belt anchorages for a Type 2 seat belt assembly shall be installed for each rear forward-facing outboard designated seating position in convertible passenger cars manufactured on or after September 1, 1991.

Issued on November 23, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-27509 Filed 11-25-88; 9:55 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 81132-8232]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1989 initial specifications of groundfish, prohibited species catch limits, and apportionment of reserves; request for comments.

SUMMARY: NOAA proposes 1989 initial total allowable catches (TACs) and apportionments for each category of groundfish, establishment of prohibited species catch (PSC) limits for sablefish, rockfish, and Pacific halibut, and apportionment of reserves in the Gulf of Alaska. This action is necessary to provide the public with the Secretary of Commerce's (Secretary) preliminary determinations about the initial TACs, apportionments, PSC limits, and reserve apportionments, and to obtain public comment on those determinations. The intended effect of this notice is to provide the Secretary with the best available information on which to base final 1989 initial specifications of TAC and apportionments and to provide opportunity for public participation in this decision-making process.

DATE: Comments are invited until December 23, 1988.

ADDRESS: Comments should be sent to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:
Background

This notice invites comments on three management proposals related to groundfish management in the Gulf of Alaska for the 1989 fishing year. They are: (A) Specifications of TAC and apportionments, (B) PSC limits for fully utilized groundfish species and for Pacific halibut, and (C) apportionments of groundfish reserves. Each of these proposals is discussed below.

(A) Total Allowable Catches

Specifications of TACs for groundfish species in the Gulf of Alaska are authorized by the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This FMP was developed

under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.92 and Part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt), which is established for these species.

TACs are apportioned initially among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF) for each species under § 611.92 and § 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processing vessels authorized to receive U.S.-harvested groundfish. TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for each species category. These reserve amounts are set aside for possible reapportionment to DAP or to JVP if the initial apportionments prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF.

Under § 611.92 and § 672.20(a)(2), the Secretary, after consultation with the North Pacific Fishery Management Council (Council), shall specify the TAC for each calendar year for each target species and the "other species" category, and shall apportion the TACs among DAP, JVP, reserves, and TALFF. The sum of the TACs must be within the OY range.

Under § 672.20(c)(1), the preliminary specifications of DAP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors, assuming sufficient TAC. The preliminary specifications of JVP will be amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to foreign processors, subject to reductions to accommodate increasing DAP and availability of TAC. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. These projections will be based on the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S. fishing industry.

The Council met during September 28 through October 1, 1988, to review information on the status of groundfish stocks. New information, which is still being assembled by the NMFS Northwest and Alaska Fishery Center, will not be available to the Council until its December 1988 meeting. Nevertheless, the Council considered recommendations made by its Advisory Panel (AP), its Scientific and Statistical Committee (SSC), and the Plan Team for Gulf of Alaska. The AP recommended that the Council adopt the Plan Team's estimates of preliminary acceptable biological catches (ABCs) for each of the target species and for the "other species" category. The SSC recommended that the Council adopt different ABCs for pollock, flounder, sablefish, slope rockfish, and pelagic shelf rockfish, but did agree with the Plan Team that little information exists to establish an ABC for demersal shelf rockfish. The SSC recommended that the Council adopt the Plan Team's recommendation for Pacific cod and thornyhead rockfish. The Council also considered public testimony.

For pollock, the Council recommended a 0–50,000 mt ABC range and then set TAC equal to ABC and DAP equal to 80 percent of the TAC. The balance of 20 percent of TAC is established as a reserve as required by § 672.20(a)(2)(i). The Council then adopted the SSC's recommended ABCs for Pacific cod, sablefish, and thornyhead rockfish. Because the SSC's recommended ABCs for flounders, "other rockfish", and pelagic rockfish differed from those recommended by the Plan Team, the Council adopted ABC ranges that accommodated both the SSC and Plan Team recommendations. Because survey information is not yet available from the fishing industry to determine the needs of the DAP or JVP components of the domestic annual harvest, the Council set preliminary TACs equal to those implemented in 1988. It then set preliminary DAPs equal to each of the TACs after subtracting 20 percent from each of the Pacific cod and flounder TACs to establish the species specific reserve.

The Plan Team's resource assessment document (RAD) that formed the basis for the Council's deliberations is summarized for each of the target species and "other species" categories as follows:

Pollock

The biomass of pollock has been declining since 1983, after reaching a peak in 1981 and 1982. Depending on the various recruitment scenarios and catch levels used to forecast pollock

abundance, the biomass was projected to rebuild to between 866,600 metric tons (mt) and 1,051,500 mt in 1988. Biomass estimates, however, have been based on hydroacoustic surveys conducted in Shelikof Strait, which lies between Kodiak Island and the Alaska Peninsula. These surveys have been focused on pollock while they are in spawning condition during March and April. Since few pollock were believed to be present outside Shelikof Strait during this time, the information obtained was thought to represent most of the pollock biomass occurring in the Western and Central Regulatory Areas. In addition to the hydroacoustic survey, other information on pollock abundance has been obtained from bottom trawl surveys that are conducted every three years in other parts of the Gulf of Alaska. The last such survey was conducted in 1987.

The 1988 hydroacoustic survey produced a biomass estimate of only 330,000 mt, which is the lowest on record. The low biomass is attributed to poor recruitment of the 1984 year class, which would otherwise have recruited into the fishery in 1987 as 3-year-old fish. In 1988, they should be available as 4-year-old fish. Other information obtained from the 1987 triennial bottom trawl survey also shows a decline. The decline appears to have occurred between 1984 and 1987. Biomass estimated from the 1987 bottom trawl survey was about 593,000 mt, and although the 1987 bottom trawl survey showed a decline in the status of pollock, the decline was not as large as the hydroacoustic survey suggests. Because the 1987 bottom trawl survey showed pollock to be in greater abundance than did the 1988 hydroacoustic survey, it is questionable whether the hydroacoustic survey provides the best estimates of pollock abundance for the entire Western and Central Regulatory Areas. An estimate can be made of total biomass if the hydroacoustic survey is considered to assess only a fraction of total biomass. Using information from the 1986 hydroacoustic survey, the 1987 bottom trawl survey, and the 1988 hydroacoustic survey, the range of total biomass is between 330,000 mt and 593,000 mt.

At any catch levels during 1989 of 0–50,000 mt, no significant differences are noted in biomass projections. On this basis, the Council adopted a preliminary ABC range equal to 0–50,000 mt and set TAC equal to ABC. No information is available to change the 3,375 mt ABC for pollock in the Eastern Regulatory Area.

Pacific Cod

Pacific cod stocks are currently healthy, although stock size appears to be decreasing. The best estimate of exploitable biomass is 449,300 mt. The Plan Team recommended an ABC range of between 93,900 mt and 175,000 mt, based on calculating fishing mortality which maximizes yield. The Council adopted preliminary ABC of 99,000, which is equal to the 1988 ABC, but set the preliminary TAC equal to 80,000 mt to reduce bycatches of Pacific halibut. TAC is apportioned to the management areas as follows: 19,000 mt in the Western Regulatory Area; 60,800 mt in the Central Regulatory Area; and 200 mt in the Eastern Regulatory Area.

Flounders

Stocks of flounder are in good condition. Total biomass is about 2,110,000 mt, of which one species—arrowtooth flounder—contributes about 54 percent, or 1,144,000 mt. Biomass estimates from the 1984 and 1987 triennial bottom trawl surveys indicate that exploitable biomass for all flounders combined has increased about 3 percent, to 767,700 mt. The Plan Team recommended ABC be set equal to the exploitable biomass, but recognized that this figure may be too large because the natural mortality rates used to calculate it may be unrealistically high. Using the 0.12 and 0.2 natural mortality rates observed for yellowfin sole and the other flounders species, respectively, in the Bering Sea, the SSC recommended an ABC for all flounders, combined, of 345,000 mt. The Council adopted a range for ABC of 345,000–767,000 mt, but recommended that the preliminary TAC for flounders be set equal to 23,000 mt to reduce bycatches of Pacific halibut. TAC is apportioned to the management areas as follows: Western Regulatory Area—1,600 mt; Central Regulatory Area—21,300 mt; and Eastern Regulatory Area—100 mt.

The Secretary notes the statement in the RAD that the Council may wish to separate arrowtooth flounder from the flounder group to prevent adverse impacts on individual flounder species, which might otherwise be overharvested if fishing were directed at them while harvesting the entire TAC. The RAD shows the ABC for arrowtooth flounder to be about 303,800 mt, which is about 40 percent of the ABC for the flounder group. Since arrowtooth flounder is presently not commercially valuable, the Secretary recognizes that NMFS surveys of the industry's intent to harvest and process flounder would be more accurate if arrowtooth flounder were separated from the flounder group. The

Secretary requests comment on the appropriateness of making this separation.

Sablefish

The sablefish biomass peaked in 1985 and appears to have declined slightly as determined by the 1987 Japan-U.S. cooperative longline survey. Results of the 1988 survey will be available before the December 1988 Council meeting. The Plan Team recommended an ABC range of between 30,000 and 40,000 mt, although the equilibrium level is 30,000 mt. The SSC recommended that the ABC should be equal to a midpoint of this range, or 35,000 mt. The Council adopted this recommendation for ABC. The Council set a total TAC of 28,000 with preliminary TACs apportioned among the regulatory areas and districts: Western—4,060 mt; Central—12,540 mt; West Yakutat—4,900 mt; and Southeast Outside/East Yakutat—6,500 mt.

Rockfish Assemblages

The same three categories of rockfish in the genus *Sebastes* are proposed to be managed in 1989 as in 1988. These categories are "other rockfish", pelagic shelf rockfish, and demersal shelf rockfish. They are described as follows:

"Other rockfish"—In the Western and Central Regulatory Areas and the Eastern Regulatory Areas west of 137° W. longitude, "other rockfish" means the 18 species of slope rockfish and the ten species of demersal shelf rockfish listed in the footnote to Table 1 of this notice. TACs will be established for these combined assemblages in these management areas. In the Southeast District, "other rockfish" means the 18 species of slope rockfish only. TACs will be established for this assemblage of 18 species in the Southeast Outside District.

Pelagic shelf rockfish—In the Western, Central, and Eastern Regulatory Areas, pelagic shelf rockfish means the five rockfish species listed in the footnote to Table 1 of this notice. TACs will be established for this assemblage in each of these regulatory areas.

Demersal shelf rockfish—In the Southeast Outside District, demersal shelf rockfish means the ten rockfish species listed in the footnote to Table 1 of this notice. A TAC will be established in the Southeast Outside District.

The condition of, and Council action for, each of the rockfish assemblages that make up the three categories are as follows:

The condition of slope rockfish is good and believed to be increasing in abundance. Exploitable biomass is estimated to be about 702,000 mt. About 14 percent of this amount, or 99,700 mt, is composed of a subcategory called "deep slope" rockfish. The balance is composed of a subcategory called "shallow slope" rockfish. The Plan

Team recommended a Gulf of Alaska-wide ABC of 14,050 mt. based on a calculated of the F_{MSY} factor of 0.02 times exploitable biomass. The SSC recommended an ABC of 28,200 mt, using an F_{MSY} factor of 0.04. The Council adopted a preliminary ABC equal to a range of 14,040–28,200 mt and set a preliminary TAC equal to 16,800 mt, apportioned among the regulatory areas as follows: 4,850 mt in the Western Regulatory Area; 7,100 mt in the Central Regulatory Area; and 4,850 mt in the Eastern Regulatory Area.

The condition of pelagic shelf rockfish is stable. The current exploitable biomass was estimated at 164,000 mt. The Plan Team recommended a Gulf of Alaska-wide ABC of 3,300 mt. The SSC recommended that the same procedure used to establish an ABC for slope rockfish be used for this category. Therefore, using an F_{MSY} factor of 0.04, the SSC calculated an ABC equal to 6,000 mt, and believes it to be conservative, because the bottom trawl surveys used to estimate biomass do not sample this category well. The Council adopted a preliminary ABC equal to a range of 3,300–6,600 mt and set a preliminary TAC equal to 3,300 mt, apportioned among the management areas as follows: 550 mt in the Western Regulatory Area; 2,350 mt in the Central Regulatory Area; and 400 mt in the Eastern Regulatory Area.

No biomass or yield estimates are available for demersal shelf rockfish. This rockfish assemblage is the target of a hook-and-line fishery in the Southeast Outside District. Information from the Alaska Department of Fish and Game on this rockfish assemblage suggests that the population is declining. The Plan Team considers that the ABC is likely an amount below the 1988 harvest, which is about 600 mt. At this time, the Council has recommended that the preliminary TAC should be set equal to the 1988 TAC of 660 mt.

Thornyhead Rockfish

The Plan Team recommended that the ABC should be set equal to the 1988 amount of 3,750 mt. The SSC agreed with the Plan Team's recommendation, noting that the 1988 catch is the highest on record. The Council also adopted an ABC of 3,750 mt and set a preliminary Gulf of Alaska-wide TAC equal to ABC.

"Other species"

No recommendations were made by the Plan Team for this group. Under the FMP, the TAC for this species category is to be set at 5 percent of the sum of the TACs established for the other groundfish categories.

The Council requested that the Secretary propose the above TACs under § 672.20(c)(1). The Council also recommended initial reserves for pollock, Pacific cod, and flounders under this paragraph but did not recommend reserves for the other groundfish species. The Council also recommended that DAP for each species be set equal to TAC, or to 80 percent of TAC for those species for which a reserve has been established.

The Secretary has reviewed the Council's recommendations for ABCs and the current specifications of TAC, DAP, JVP, reserves, and TALFF. He proposes the TACs as recommended by the Council, with the understanding that each is subject to change following that December 1988 Council meeting. The final determinations of the extent to which U.S. processing and harvesting will occur during the coming year will be made based upon the public comments on this notice and a domestic processor survey made by the Regional Director in November 1988.

(B) Fully Utilized Species and Pacific Cod

Section 672.20(b)(1) specifies that if the Secretary determines, after consultation with the Council, that the TAC for any species or species group will be fully harvested in the DAP

fishery, he may specify for each calendar year the PSC limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified shall be for bycatch only and cannot be retained. During 1988, the Secretary had specified PSC limits for sablefish and "other rockfish" that were applicable to JVP. These respective amounts were: Sablefish—188 mt; and "other rockfish"—432 mt. Comments are invited on these PSCs, but the public is cautioned that these amounts are likely to change at the December 1988 Council meeting, depending on amounts of groundfish that might be allocated to JVP. Other PSC limits may be established as well, depending upon specifications of DAP amounts.

Section 672.20(f)(2)(i) specifies a framework procedure for setting PSC limits for Pacific halibut. The Secretary, after consultation with the Council, will publish a notice in the *Federal Register* as soon as practicable after October 1 of each year, specifying the proposed Pacific halibut PSC limits in the regulatory areas for JVP and DAP fisheries. If the Regional Director determines that the catch of Pacific halibut by U.S. vessels fishing in DAP or JVP operations will reach a PSC limit, he will publish a notice in the *Federal Register* prohibiting fishing with trawl gear other than off-bottom trawl gear for the rest of the year

by the vessels and in the area to which the PSC limit applies. He may allow some of the those vessels to continue to fish for groundfish using bottom trawl gear under specified conditions.

At its September 1988 meeting, the Council did not recommend PSC limits for 1989, because not enough information is yet available to determine the balance between DAP and JVP specifications by target species and the "other species" category. The Secretary, therefore, is publishing the PSC limits for halibut that were in effect during 1988 and proposes them for 1989. They are 240 mt of catch in the JVP fisheries and 4,240 mt of catch in the DAP fisheries and, given the expected halibut mortality resulting from a mix of gear types, are consistent with the Council's goal to not exceed 2,000 mt of halibut that might be killed in the groundfish fishery.

The PSC limits for halibut are derived from historical bycatch rates experienced by vessels while targeting on groundfish. These rates, expressed as percentages in the following tabulation, are proposed for use in calculating the 1989 halibut PSC limits that will apply to DAP and JVP fisheries while trawling for groundfish with bottom trawls and mid-water trawls and while fishing for Pacific cod and sablefish with hook-and-line gear.

	Bottom Trawl		Mid-water trawl		Hook-and-line			
	W	C	W	C	Pacific cod		Sablefish	
					W	C	W	C
DAP	2.53	2.53	0.06	0.06	5.23	9.15	1.2	1.2
JVP	2.53	2.53	0.06	0.06	5.23	9.15		

W=Western Regulatory Area. C=Central Regulatory Area.

The resulting apportionment of PSC limits for halibut between DAP and JVP is preliminary at this time and will be reviewed at the December 1988 Council meeting when the Council makes its final recommendations. Public comment on the appropriateness of these rates relative to the health of halibut stocks, fishery-experienced rates in 1988, and the goals and objectives of the FMP are particularly requested. Public comments are also requested on the appropriateness of the estimate of halibut mortality rates after release assumed for the various fisheries as shown in the following tabulation:

	Assumed mortality (percent)
Bottom trawl:	
DAP	50
JVP	100
Off-bottom trawl:	
DAP	0
JVP	0
Hook-and-line:	
DAP	25
JVP	25

(C) Apportionment of Groundfish Reserves

At this time, the Secretary is

proposing that reserves for each appropriate species category be apportioned to DAP under § 672.20(d)(1), subject to change after the December 1988 Council meeting. TALFF is set at zero. The Council did not recommend any amounts for JVP. However, § 672.20(c)(1) requires that JVP be set at least equal to amounts harvested in 1988, subject to reductions to accommodate any increases in DAP. Because JVP fishermen harvested 1,500 mt of Pacific cod and 1,900 mt of flounders in the Central Regulatory Area in directed fisheries in 1988, and because the Secretary has not determined that those amounts will be

harvested in DAP fisheries during 1989, the Secretary is proposing at this time that JVP be set equal to 1,500 mt and

1,900 mt, respectively, for these two species as required by regulations. TALFF is set equal to zero, because the

Secretary expects all species will be fully utilized by U.S. fishermen in 1989, either in DAR or JVP fisheries.

TABLE 1.—PRELIMINARY ABCs, TACs, DAPs, JVPs, RESERVES, AND TALFFs OF GROUND FISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA

Species	Area ¹	ABC	TAC	Reserve	DAP	JVP	TALFF
Pollock.....	W/C.....	0-50,000	0-50,000	0	0-50,000	0	0
	E.....	3,375	3,375	0	3,375	0	0
Total.....		0-53,375	0-53,375	0	0-53,375	0	0
Pacific cod.....	W.....	19,000	19,000	0	19,000	0	0
	C.....	73,000	60,800	0	59,300	1,500	0
	E.....	7,000	200	0	200	0	0
Total.....		99,000	80,000	0	78,500	1,500	0
Flounders.....	W.....	69,000-142,650	1,600	0	1,600	0	0
	C.....	239,000-538,280	21,300	0	19,400	1,900	0
	E.....	37,000-86,770	100	0	100	0	0
Total.....		345,000-767,700	23,000	0	21,100	1,900	0
Sablefish.....	W.....	5,075	4,060	0	4,060	0	0
	C.....	15,680	12,540	0	12,540	0	0
	WYK.....	6,125	4,900	0	0	0	0
	SEO/EYK.....	8,120	6,500	0	6,500	0	0
Total.....		35,000	28,000	0	28,000	0	0
Other (² and ³).....	W.....	3,400-6,800	4,850	0	4,850	0	0
Rockfish.....	C.....	6,100-12,200	7,100	0	7,100	0	0
	E.....	4,550-9,200	4,850	0	4,850	0	0
Total.....		14,050-28,200	16,800	0	16,800	0	0
Pelagic ⁴	W.....	550-1,100	550	0	550	0	0
Shelf.....	C.....	2,350-4,700	2,350	0	2,350	0	0
Rockfish.....	E.....	400-800	400	0	400	0	0
Total.....		3,300-6,600	3,300	0	3,300	0	0
Demersal (⁵) shelf rockfish.....	SEO.....	Unknown	660	0	660	0	0
Thornyhead rockfish.....	GW.....	3,750	3,750	0	3,750	0	0
Other species ⁶	GW.....	N/A	7,800-10,400	0	7,800-10,400	0	0
Total.....		500,100-993,625	163,310-219,285	0	159,910-215,885	3,400	0

¹ See Figure 1 of § 672.20 for description of regulatory areas/districts.

² The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes Slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District includes Slope rockfish.

³ The category slope rockfish includes *Sebastes polyspinis* (northern rockfish), *S. alutus* (Pacific ocean perch), *S. Aleutianus* (rougheye), *S. zacentrus* (sharpchin), *S. borealis* (shortraker), *S. aurora* (aurora), *S. melanostomus* (blackgill), *S. goodei* (chillipepper), *S. crameri* (darkblotched), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. jordani* (shortbelly), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), and *S. reedi* (yellowmouth).

⁴ The category pelagic shelf rockfish includes *Sebastes melanops* (black), *S. mystinus*, (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

⁵ The category demersal shelf rockfish includes *Sebastes paucispinis* (bocaccio), *S. nebulosus* (China), *S. caurinus* (copper), *S. maliger* (quillback), *S. proriger* (redstripe), *S. helvomaculatus* (rosethorn), *S. brevispinis* (silvergray), *S. nigrocinctus* (tiger), *S. ruberrimus* (yelloweye), *S. pinningeri* (canary).

⁶ The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, and octopus. The TAC is equal to 5% of the TACs of the target species.

The results of the industry survey, which NMFS will conduct prior to the Council's December 1988 meeting, may show that U.S. fishermen intend to harvest certain species in excess of the initial specifications of DAP and up to the amount equal to TAC. Because reapportioning the entire reserve to DAP would result in no amount being available to JVP or TALFF, comments are also invited on appropriate bycatch amounts that might be required as bycatch in JVP or TALFF fisheries for other groundfish species.

Any additional information on the actual plans of U.S. fishermen and

processors for harvesting and processing groundfish will be considered by the Secretary when making his final decision on the Council recommendations for 1989 initial apportionments of TACs in the Gulf of Alaska.

Public comments on the above groundfish apportionments, PSC limits, and reserve reapportionments will be accepted by the Secretary for 30 days after this notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments and, after consultation with the Council, specify the final PSC

limits and annual TAC for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the Federal Register on or about January 1, 1989. These amounts will replace the corresponding amounts that were in place during 1988.

Other Matters

This action is taken under 50 CFR 611.92 and 672.20. It complies with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis

prepared for the implementing regulations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: November 23, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 88-27502 Filed 11-23-88; 4:15 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 675

[Docket No. 81131-8231]

Groundfish of the Bering Sea and Aleutian Islands; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary 1989 initial specifications of groundfish; request for comments.

SUMMARY: NOAA proposes 1989 initial specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area. This action is necessary to solicit public comments on preliminary determinations of the initial specifications of TAC and apportionments of groundfish that may be harvested in the BSAI area in 1989. The intended effect of this notice is to provide the Secretary of Commerce (Secretary) with the best available information on which to base final 1989 initial specifications of TAC and apportionments and to provide opportunity for public participation in this decision-making process.

DATE: Comments are invited until December 23, 1988.

ADDRESS: Comments should be sent to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and Part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area

(FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify each calendar year the TAC for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). The regulations further require the Secretary to annually publish preliminary TACs and the apportionments of each TAC and receive public comment on these amounts for a period of 30 days (§ 675.20(a)(6)). Table 1 satisfies this requirement. After considering all timely comments and after consultation with the Council, the Secretary will publish the final annual TACs for 1989 and initial apportionments as soon as practicable after December 15, 1988.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel, and Scientific and Statistical Committee (SSC), at their September 1988 meetings, reviewed preliminary biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the draft Resource Assessment Document (RAD) dated September 16, 1988. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC), and other biological parameters.

Procedures for Estimating ABC

Calculation of ABC varies among species, depending on the quality of available data and prior knowledge of a species' stock status. The Plan Team has adopted three steps for estimating ABCs. First, age-structured models are used to estimate exploitable biomass of a stock and, when possible, to project the population dynamics of the stock in the near future, and to assess potential impacts of different catch levels.

Second, the ABC for a stock is calculated by multiplying an exploitation rate times the estimated exploitable biomass. Various exploitation rates or fishing mortality (F) rates may be used in this calculation. For example, the exploitation rate that would produce MSY (F_{MSY}) is used when

the stock is known to be in good condition, high in abundance, and not in danger of drastic declines. However, when particular conservation or caution is indicated, the more conservative $F_{0.1}$ harvest strategy is used to determine an exploitation rate. This strategy determines a level of F at which the marginal increase in yield per recruit due to an increase in F is 10 percent of the marginal yield per recruit in a lightly exploited fishery. Recruitment refers to the growth of juvenile fish into the adult or exploitable population. Generally, the $F_{0.1}$ harvest strategy produces a more conservative exploitation rate than F_{MSY} . Another alternative is to use historical exploitation rates when historical fishery data indicate that a stock is not adversely affected by such rates.

Finally, an empirical estimation of ABC based on historical catch levels may be used when information is insufficient to estimate the biomass of a stock. Details of this and other calculation procedures are discussed in the 1988 draft RAD which is available on request from the Council.

A summary of ABCs for each species for 1989 and other biological data from the 1988 draft RAD is provided below. The Plan Team will revise the draft RAD at its November 1988 meeting and produce a final RAD with ABC recommendations prior to the Council's December 1988 meeting. At that time, the Council will develop TAC recommendations to the Secretary which are derived from the ABCs and adjusted for other biological and socioeconomic considerations. The TACs may be further adjusted so that their sum does not exceed the maximum optimum yield allowed by the FMP.

Apportionment of TAC

The amount of groundfish in each species TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

This initial TAC (ITAC) for each target species and the "other species" category at the beginning of the year, which is equal to 85 percent of TAC, is then apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF). Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S.

vessels that process their catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the U.S. exclusive economic zone. In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)).

The preliminary TACs, ITACs, reserve, and initial apportionments of groundfish in the BSAI area for 1989 are given in Table 1 of this notice. For purposes of this notice, the TACs and ITACs in Table 1 are the same as those for 1988, except for species for which the 1989 ABCs are less than their 1988 TACs. With few exceptions, the DAP, JVP, DAH, and TALFF amounts in Table 1 also represent the initial apportionments of the 1988 ITACs because of the current absence of information on domestic processing intentions in 1989. The exceptions include Bering Sea (BS) subarea pollock and Atka mackerel for which increased demand is anticipated, yellowfin sole and BS subarea sablefish which are affected by reduced ABCs, and rock sole and "other flatfish" which may be separate categories in 1989, pending Secretarial approval of Amendment 12 to the FMP. These amounts are subject to change as a result of public comment, additional analysis of the biological condition of the groundfish stocks, results of a November survey of domestic processing intentions in 1989, and consultation with the Council at its meeting scheduled for December 5-9, 1989.

Prohibited Species Catch (PSC) Limits

The Secretary received Amendment 12 to the FMP from the Council on August 7, 1988. Part of that amendment, if approved by the Secretary, would provide for annual specification of PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic (i.e., DAH) fisheries. These PSC limits would apply to JVP and foreign fisheries in a manner described in the notice of

proposed rulemaking published September 6, 1988 (53 FR 34322; see also correction notice at 53 FR 36696). Groundfish PSC limits are proposed for the 1989 fishing year in the following table. Calculation of these PSC limits is discussed in the RAD. The PSC limit for sablefish in the BS subarea is greater than the calculated amount of 1.45 mt to provide for a fair margin of incidental catch without exceeding the ABC. This PSC limit is the difference between the ABC and TAC of BS-subarea sablefish.

Species	Initial PSC limits in metric tons	
	JVP	TALFF
Greenland turbot.....	60	0
Sablefish:		
Bering Sea.....	38	0
Aleutian Islands.....	47	0
Pacific Ocean perch:		
Bering Sea.....	28	0
Aleutian Islands.....	1,126	0
Other rockfishes:		
Bering Sea.....	31	0
Aleutian Islands.....	583	0

Summary of Biological Condition and ABCs

Pollock

The estimated abundance of pollock in the eastern Bering Sea (EBS, continental shelf area of the BS subarea to depths of 100 fathoms) has decreased. Based on a cohort analysis, the projected exploitable biomass (pollock aged 3-9 years) in 1989 will be about 5,300,000 mt, down from the 1988 estimate of 6,500,000 mt. However, historical exploitation of this stock has been low relative to exploitation rates for Asiatic stocks and model projections. The plan Team recommended an exploitation rate for the EBS stock of 25.3 percent based on the $F_{0.1}$ harvest strategy. At this rate, the calculated ABC for pollock in the EBS is 1,340,000 mt. For comparison, the ABC of this stock for 1988 was 1,500,000 mt, which was derived using an exploitation rate of 23 percent. The BS subarea incorporates some deep water areas of the Bering Sea in addition to the EBS continental shelf. The Plan Team has found that pollock in these deep water areas substantially differ in age structure from the EBS shelf and slope pollock. The Plan Team recommended a separate biomass estimate of 1,000,000 mt and an ABC of 230,000 mt for pollock in the off-shelf part of the BS subarea. The Council, however, declined to accept this recommendation.

The size and dynamics of the pollock population in the Aleutian Islands (AI) subarea are not well understood. The

latest survey of the exploitable biomass in this subarea was in 1986 and produced an estimate of 890,000 mt. Based on an assumption that the rate of decline in the pollock biomass in the AI subarea was the same as in the BS subarea, the Plan Team estimated the AI exploitable biomass in 1989 to be 690,000 mt. The Plan Team calculated an ABC of pollock for the AI subarea to be 160,000 mt using an exploitation rate of 23 percent derived from the $F_{0.1}$ harvest strategy. These amounts are unchanged from those developed last year for 1988.

Pacific Ocean Perch (POP)

This is a species category which includes five species of rockfish in the genus *Sebastes* which inhabit outer continental shelf and upper slope areas. Generally, POP stocks continue to remain low in abundance relative to biomass levels during the early 1960s. In the BS subarea, the estimated exploitable biomass for 1989 of 101,100 mt is based on the mean of estimates from 1979-1985 trawl surveys of the EBS shelf. In the AI subarea, the 1989 estimated exploitable biomass of 276,500 mt is based on the mean of estimates from trawl surveys in 1980, 1983 and 1986. These biomass estimates are the same as those made last year for 1988 because there are no new data on which to base a change. For the same reason, the Plan Team recommended using the same 6 percent exploitation rate used last year for both subareas to calculate ABCs of 6,000 mt and 16,600 mt, respectively, for the BS and AI subareas. Both of these exploitation rates were derived using the $F_{0.1}$ harvest strategy which is intended to provide for some rebuilding of the POP species complex.

Other Rockfishes

This species category includes all species of *Sebastes* and *Sebastolobus* other than those in the POP complex. The estimated exploitable biomass for 1989, based on the same survey data and methods used for POP, is 7,100 mt in the BS subarea and 18,500 mt in the AI subarea. These estimates for 1989 are unchanged from 1988 estimates for the same reason POP biomass estimates were unchanged. Likewise, the Plan Team recommended no change in the exploitation rate of 6 percent, derived from the $F_{0.1}$ harvest strategy, for both subareas, which produces ABCs of 400 mt and 1,100 mt, respectively, for the BS and AI subareas.

Sablefish

The relative abundances of sablefish in the EBS and AI subareas have been estimated from U.S.-Japan cooperative

longline surveys annually since 1982 and 1980, respectively. The 1987 survey data were the most recent data available to the Plan Team when the draft RAD was developed. Those data indicated a significant decrease in relative numbers and weight of sablefish in the EBS from 1986 to 1987. As a result, the projected exploitable biomass of sablefish in 1989 for the BS subarea is estimated to be 16,900 mt. This represents a 70 percent decrease from the estimated 1988 exploitable biomass. Preliminary assessment of the 1988 survey data, however, may moderate this decrease in biomass. The relative abundance of sablefish in the AI subarea showed no change from 1986 to 1987 and, therefore, the estimated exploitable biomass for 1989 in this area also remains unchanged at 96,300 mt. Due to uncertainty of stock abundance in the BS subarea, the Plan Team used an exploitation rate determined to maintain the sablefish biomass in equilibrium over the next five years. However, the Council followed the SSC's recommendation to use a fishing mortality rate equivalent to the natural mortality rate. This results in an exploitation rate of 9.1 percent for the BS subarea. Although this rate is higher than the 6 percent used to calculate the 1988 ABC, the 1989 ABC calculated using the lower biomass estimate is 1,538 mt, which is substantially (66 percent) less than the 1988 ABC. The exploitation rate for the AI subarea is unchanged from the 6 percent used to calculate the 1988 ABC and, therefore, the 1989 ABC for this subarea also is unchanged at 5,800 mt.

Atka Mackerel

Biological surveys in the AI subarea that cover the range of this species occur only once every three years. Data from the latest survey in 1986 indicate that biomass decreased 74 percent from 1983. Absolute abundance cannot be accurately estimated, however, which obviated the calculation of ABC by multiplying an F value by biomass. Instead, the $F_{0.1}$ harvesting strategy was used in a catch-at-age analysis. Based on indications of relatively weak recruitment during the years 1982-86, a conservative estimate from this analysis suggests an ABC of 21,000 mt. This analysis was performed originally for the 1988 fishing year. No new biological or catch data suggest a change in stock size or character. Therefore, the same ABC is recommended again for 1989.

Pacific Cod

The projected exploitable biomass in the BSAI area in 1989 is estimated to be 1,190,000 mt. Although this is about 20

percent lower than that estimated last year for 1988, the abundance of Pacific cod is considered high and stable. Exploitation at the F_{MSY} level recommended by the Plan Team would provide an exploitation rate of 31 percent. This is an increase over the 26 percent exploitation rate used to calculate the 1988 ABC but it is based on the same F_{MSY} harvesting strategy. The new exploitation rate calculates an ABC for 1989 of 370,600 mt, which is slightly less than the 385,300 mt ABC calculated for 1988.

Yellowfin Sole

This is the most abundant flatfish species in the EBS and second in abundance to pollock among all groundfish species managed under the FMP. The primary reason for its relatively high abundance is the strong recruitment of year classes spawned in the late 1960s and mid-1970s. Exploitable biomass is projected to increase from 1,400,000 mt in 1988 to 1,530,000 mt in 1989. The same $F_{0.1}$ exploitation strategy used in 1988 is used again in 1989. The resulting exploitation rate for 1989 of 16 percent, however, is less than the 18 percent used to calculate the 1988 ABC due to differences in an age-structured model. The calculated ABC for 1989 of 241,000 mt therefore also is less than the 1988 ABC of 254,000 mt.

Greenland Turbot

The Greenland turbot resource continues to decline in abundance and is probably below its long term average abundance. The declining trend, observed since 1980, is due to poor recruitment and is expected to continue into the early 1990s. The projected exploitable biomass for 1989 is estimated to be 370,700 mt. Forecasts for all conservative harvesting strategies, including no fishing, project continued declines in biomass. However, an exploitation rate of 3.4 percent, based on the conservative $F_{0.1}$ harvesting strategy, would provide an ABC in 1989 of 12,600 mt. This is the same exploitation rate used last year to calculate an ABC for 1988 of 14,100 mt.

Arrowtooth Flounder

The abundance of arrowtooth flounder has increased substantially in recent years due to progressively stronger recruitment since 1975. This trend appears to be continuing based on the 1988 summer trawl survey. The exploitable biomass of this species in 1989 is projected to be 552,600 mt. This is a 46 percent increase from the exploitable biomass estimated last year for 1988. An exploitation rate of 31

percent was derived from the F_{MSY} harvest strategy. The 1989 ABC using this rate is calculated to be 171,300 mt. This exploitation rate differs slightly from the 29 percent rate used to calculate the 1988 ABC of 109,500 mt. The small difference results from updating some biological parameters used in the population model. The ABC for 1989, however, represents an increase of 56 percent over that for 1988 due to the increased estimated biomass.

Rock Sole

If there is Secretarial approval of Amendment 12 to the FMP, fishing for rock sole will be managed separately from the "other flatfish" category for the first time in 1989. Trawl survey data indicate that the biomass of rock sole is high and appears to be increasing. The exploitable biomass in 1989 is projected to be 1,103,000 mt. An F_{MSY} harvest strategy was used to determine the exploitation rate of 13 percent because the biomass appears to be above the level that produces MSY. Using this exploitation rate, the ABC for 1989 was calculated to be 143,400 mt.

Other Flatfishes

The removal of rock sole from this category would leave it composed of flathead sole, Alaska plaice, and miscellaneous flatfishes. All species in this group appear to be in relatively high abundance; above the level necessary to produce MSY. The exploitable biomass of these fishes as a group in 1989 is projected to be 1,188,700 mt. The decrease in this estimate from the 2,140,000 mt estimate made last year for 1988 reflects the removal of rock sole from this category. The rock sole and "other flatfish" categories added together indicate a 7 percent increase in biomass over 1988. The F_{MSY} harvest strategy was used for all species in this category due to their population strength. This resulted in exploitation rates of 13 percent for flathead sole and Alaska plaice, and 15.5 percent for the miscellaneous flatfishes, approximately the same rates used last year to calculate the 1988 ABC. The resulting ABC for 1989 is calculated to be 184,300 mt, which is about 10 percent more than the 1988 ABC for "other flatfish" without rock sole.

Squid

Information on the distribution, abundance, and biology of squid stocks is insufficient for standard analysis of biomass and MSY. Based on historical catch data, primarily from foreign fisheries, harvests of 10,000 mt annually are believed to be sustainable. The 1989

ABC is therefore specified at 10,000 mt, as it was for 1988.

Other Species

This category includes species of sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. This group of groundfish is currently of minor economic value; fishing effort generally is not targeted on any of these species. However, they have potential economic value and are important ecosystem components. The estimated exploitable biomass of "other species" has remained relatively high and in 1989 is projected to be 673,600 mt. This represents an increase over the estimated 1988 exploitable biomass of

540,000 mt mostly due to an adjustment in the calculations from the trawl survey data. No significant change has been seen in this stock size since 1986. Harvesting this stock at near the historical exploitation rate of 8.8 percent appears appropriate given that recent catches of this group have been well below this level. Hence, the ABC of "other species" in 1989 is calculated to be 59,000 mt which is a 5,000 mt increase over the 1988 ABC for this species category.

Other Matters

This action is authorized under 50 CFR 611.93(b) and 675.20, complies with Executive Order 12291, and is covered

by the Regulatory Flexibility Analysis prepared for the implementing regulations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 23, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

TABLE 1.—PRELIMINARY 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA ¹

Species	1989 TAC	Initial TAC ²	DAP ³	JVP ⁴	DAH ⁵	TALFF ⁶
Pollock:						
BS.....	1,300,000	1,105,000	900,000	205,000	1,105,000	0
AI.....	45,000	38,250	4,160	34,090	38,250	0
Pacific Ocean Perch:						
BS.....	5,000	4,250	4,250	0	4,250	0
AI.....	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS.....	400	340	340	0	340	0
AI.....	1,100	935	935	0	935	0
Sablefish:						
BS.....	1,500	1,275	1,275	0	1,275	0
AI.....	5,000	4,250	4,250	0	4,250	0
Atka Mackerel:						
BSAI.....	21,000	17,850	3,000	14,850	17,850	0
Pacific Cod:						
BSAI.....	200,000	170,000	87,416	82,584	170,000	0
Yellowfin Sole:						
BSAI.....	241,000	204,850	60,000	144,850	204,850	0
Greenland Turbot:						
BSAI.....	11,200	9,520	9,520	0	9,520	0
Arrowtooth Flounder:						
BSAI.....	5,531	4,701	3,808	893	4,701	0
Rock Sole:						
BSAI.....	70,000	59,500	50,000	9,500	59,500	0
Other Flatfishes:						
BSAI.....	76,269	64,829	50,000	14,829	64,829	0
Squid:						
BSAI.....	1,000	850	850	0	850	0
Other Species:						
BSAI.....	10,000	8,500	2,000	6,500	8,500	0
Total.....	2,000,000	1,700,000	1,186,904	513,096	1,700,000	0

¹ Amounts are in metric tons.

² Initial TAC (ITAC)=0.85 of TAC; initial reserve=TAC-ITAC=300,000.

³ DAP—Domestic annual processing.

⁴ JVP—joint venture processing.

⁵ DAH—DAP + JVP.

⁶ TALFF—total allowable level of foreign fishing.

[FR Doc. 88-27501 Filed 11-23-88; 4:20 pm]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 81133-8233]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1989 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1989. These quotas were selected from a range defined as optimum yield (OY) for each fishery, as adjusted to reflect fishing activity at the end of 1988. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1989.

DATE: Comments will be accepted until December 23, 1988.

ADDRESS: Send comments on the proposed 1989 fishing quotas to Richard B. Roe, Regional Director, NMFS, 14 Elm Street, Gloucester, MA 01930-3799. Please mark the outside of the envelope "Surf Clam Quota Comments".

Information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 508-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values in this section, the Secretary considered the latest available stock assessments prepared by NMFS, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing as presented in a written report prepared by the Council and adopted by the Regional Director, Northeast Region, NMFS (Regional

Director). The Secretary has also received and taken into account specific recommendations from the Council.

Surf clam quotas are divided into quarterly quotas as specified in § 652.21 (a), (b)(2), and (c)(2). Amounts underharvested or overharvested from quarterly quotas are applied to quotas of succeeding quarters or calendar years as specified in § 652.21 paragraphs (a)(3), (b)(3), (c)(3) and (d). Ocean quahog quotas may be divided into quarterly quotas if the Regional Director determines that it is necessary to distribute the quota throughout the year to prevent the annual quota from being exceeded.

As of September 30, 1988, surf clam landings from the Mid-Atlantic Area were 1,944,000 bushels out of an adjusted annual quota of 2,695,000 bushels. Landings of surf clams from the Georges Bank Area were 81,000 bushels out of an adjusted annual quota of 485,000 bushels. Nantucket Shoals Area surf clam landings were 159,000 bushels out of an adjusted annual quota of 205,000. Ocean quahog landings were 3,462,000 bushels out of a quota of 6,000,000 bushels. The adjusted surf clam quotas were taken from base quotas of 2,650,000 bushels for the Mid-Atlantic Area, 300,000 bushels for the Georges Bank Area, and 200,000 bushels for the Nantucket Shoals Area.

The proposed quotas for the surf clam and ocean quahog fisheries for 1989 are:

1989 PROPOSED SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery areas	1989 proposed quotas (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	5,200,000

The proposed surf clam quotas are the same as those which have been in place for the past 3 years. The proposed ocean quahog quota has been reduced, as recommended by the Council, in response to industry concerns of declining catch rates. This is evident in logbook returns from specific areas, although the overall catch rate appears to be stable. The proposed ocean quahog quota is equal to the highest historical catch (1985) of ocean quahogs.

The proposed quarterly surf clam quotas, by area, are:

1989 PROPOSAL SURF CLAM/OCEAN QUAHOG QUARTERLY QUOTAS

(in bushels)

Fishery areas	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Mid-Atlantic surf clam	662,500	662,500	662,500	662,500
Georges Bank surf clam	75,000	75,000	75,000	75,000
Nantucket Shoals surf clam	40,000	60,000	60,000	40,000

If adopted, the proposed surf clam quotas and associated quarterly quotas will be adjusted based upon the final 1988 harvest data and notice will be published in the **Federal Register**. The amount of adjustment will be determined from the difference between the base 1988 quotas and the amount actually harvested. The regulations implementing the FMP do not provide for an adjustment of the ocean quahog quota, unless quarterly quotas have been established. To date, the Regional Director has not made a determination that quarterly quotas are necessary in this fishery.

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas by notice in the **Federal Register**.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 22, 1988.

James W. Brennan,
Assistant Administrator for Fisheries.
[FR Doc. 88-27398 Filed 11-23-88; 10:34 am]
BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on Thursday, December 15, 1988, in the Sheraton Motor Inn, 195 Route 18 South, New Jersey Turnpike Exit 9, East Brunswick, NJ 08816. The Committee will discuss prospective programs and decide on a project activity. Dr. Barbara Anderson, director, office of equal educational opportunity, New Jersey Department of Education, and Ms. Reno O. Smith, president, NAACP Morris County, NJ chapter, will present background information on recent complaints of discrimination against minorities in special education programs in Morris County, NJ.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Stephen H. Balch on John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 21, 1988.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 88-27459 Filed 11-28-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 396]

Resolution and Order Approving the Application of the Greater Baton Rouge Port Commission for a Foreign- Trade Zone in the Baton Rouge, LA, Area

Proceedings of the Foreign-Trade
Zone Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Baton Rouge Port Commission, filed with the Foreign-Trade Zones Board (the Board) on October 13, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in East Baton Rouge, West Baton Rouge, and Iberville Parishes, Louisiana, within the Baton Rouge Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN-TRADE ZONES BOARD

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in the Baton Rouge, Louisiana, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation,

and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Greater Baton Rouge Port Commission (the Grantee) has made application (filed October 13, 1987, FTZ Docket 21-87, 52 FR 39673) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in East Baton Rouge, West Baton Rouge, and Iberville Parishes, Louisiana, within the Baton Rouge Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 154, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of

any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Office at Washington, DC, this 2nd day of November, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-27500 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than December 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping duty proceeding:	
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A-351-602)	12/01/87—11/30/88
Canada: Elemental Sulphur (A-122-047)	12/01/87—11/30/88
Hong Kong: Photo Albums and Filler Pages (A-582-501)	12/01/87—11/30/88
Italy: Clear Sheet Glass (A-475-025)	12/01/87—11/30/88
Japan: Cellular Mobile Telephones and Subassemblies (A-588-405)	12/01/87—11/30/88
Japan: Certain Electric Motors of 150-500 HP (A-588-091)	12/01/87—11/30/88
Japan: Polychloroprene Rubber (A-588-046)	12/01/87—11/30/88
Japan: Steel Wire Strand for Prestressed Concrete (A-588-068)	12/01/87—11/30/88
Japan: Tuners (of the type used in consumer electronic products) (A-588-014)	12/01/87—11/30/88
Mexico: Porcelain-On-Steel Cooking Ware (A-201-504)	12/01/87—11/30/88
Netherlands: Animal Glue and Inedible Gelatin (A-421-060)	12/01/87—11/30/88
New Zealand: Low-Fuming Brazing Copper Rod and Wire (A-614-502)	12/01/87—11/30/88
The People's Republic of China: Porcelain-On-Steel Cookware (A-570-506)	12/01/87—11/30/88
The Republic of Korea: Photo Albums and Filler Pages (A-580-501)	12/01/87—11/30/88
Sweden: Certain Carton-Closing Staples and Staple Machines (A-401-004)	12/01/87—11/30/88
Sweden: Seamless Stainless Steel Hollow Products (A-401-603)	05/22/87—11/30/88
Sweden: Animal Glue and Inedible Gelatin (A-401-061)	12/01/87—11/30/88
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings (A-583-605)	12/01/87—11/30/88
Taiwan: Porcelain-On-Steel Cooking Ware (A-583-508)	12/01/87—11/30/88
West Germany: Animal Glue and Inedible Gelatin (A-428-062)	12/01/87—11/30/88
Yugoslavia: Animal Glue and Inedible Gelatin (A-479-063)	12/01/87—11/30/88
Suspended investigation:	
Costa Rica: Cement (C-223-401)	10/01/87—09/30/88
Mexico: Polypropylene Film (C-201-006)	01/01/87—12/31/88
Mexico: Pectin (C-201-007)	01/01/87—12/31/87
Countervailing duty proceeding:	
Mexico: Litharge, Red Lead and Lead Stabilizers (C-201-005)	01/01/87—12/31/87
Mexico: Porcelain-On-Steel Cooking Ware (C-201-505)	01/01/88—12/31/88
Mexico: Toy Balloons and Playballs (C-201-004)	01/01/87—12/31/87

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the *Federal Register* a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by December 31, 1988.

If the Department does not receive by

December 31, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on these entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to

collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: November 22, 1988.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

[FR Doc. 88-27499 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DS-M

**Export Trade Certificate of Review;
Pacific Northwest Fish Export
Association, Inc.**

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to public a notice in the *Federal Register* identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85-2A0017."

OETCA has received the following application for a second amendment to Export Trade Certificate of Review #85-00017, which was issued on April 24, 1986 (51 FR 16089, April 30, 1986) and

first amended on June 20, 1988 (53 FR 23781, June 24, 1988).

Applicant: Pacific Northwest Fish Export Association, Inc., ("PNFEA"), c/o DWJ Corp., 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington, 98101, Contact: James P. Walsh, legal counsel, Telephone: 202/822-9775.

Application #: 85-2A0017

Date Deemed Submitted: November 16, 1988.

Summary of the Application

PNFEA seeks to amend its certificate to:

Add the following company as a new "Member" of the certificate: Ward Cove Packing Company of Seattle, Washington.

Date: November 22, 1988.

Thomas H. Stillman,
Director, Office of Export Trading Company Affairs.

[FR Doc. 88-27469 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Reviews on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with requests to certain rotogravure doctor blade steel strip, and certain T-4 feeler gauge steel.

DATE: Comments must be submitted on or before December 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S.

... determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as

allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products * * *

We have received short-supply requests for the following products:

1. Certain Rotogravure Doctor Blade Steel Strip: 1% carbon, cold-rolled, hardened, tempered, polished, coiled, in thicknesses ranging from 0.00315 to 0.010 inch and in widths ranging from two to seven inches.

2. Certain Swedish T-4 Feeler Gauge Steel: general specification AISI 1095, hardened, tempered, bright polished, round polished edges in thicknesses ranging from 0.001 to 0.065 inch, and in widths of 0.250 inch and 0.505 inch.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than December 9, 1988. Comment should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain each request and all comments on each request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file.

The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

November 22, 1988.

Jan W. Mares,
Assistant Secretary for Import Administration.

[FR Doc. 88-27498 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-05-M

Minority Business Development Agency

Business Development Center Applications; Richmond, VA

November 21, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at \$194,118 for the project performance of April 1, 1989 to March 31, 1990. The MBDC will

operate in the Richmond, Virginia, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of \$165,000 in Federal funds and a minimum of \$29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is January 3, 1989. Applications must be postmarked on or before January 3, 1989.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202/377-8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding

information, copies of application kits and applicable regulations can be obtained at the above address.

(11,800 Minority Business Development (Catalog of Federal Domestic Assistance))

Date: November 18, 1988.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 88-27490 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-21-M

National Ocean and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910; or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366.

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Building, Tampa, FL 33609, 813/228-2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW First Avenue, Portland, OR 97201, 503/221-6352.

Clearance Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

FOR FURTHER INFORMATION CONTACT: John D. Kelly or Robert Dickinson (Office of Fisheries, Conservation and Management 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the *Federal Register*. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1989 have been received from the Governments shown below.

Dated: November 22, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and fishery	Regional fishery management councils
ABS—Atlantic Billfish and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean, North Pacific.
BSA—Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA—Gulf of Alaska Groundfish.	North Pacific.
NWA—Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA—Snail (Bering Sea).	North Pacific.
WOC—Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS—Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahimahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1.....	Catching, processing and other support.
2.....	Processing and other support only.
3.....	Other support only.
*.....	Vessel(s) supporting U.S. vessels (Joint Venture).

Activity code	Fishing operations
**	Cargo transport vessels with fish finding equipment on board receive an activity code 2 to enable them to perform both scouting as well as support activities.
***	Number to be assigned at a later date.

Joint Venture*East Coast Mackerel*

The Governments of East Germany, Poland, the Soviet Union, the Netherlands and the United Kingdom applied for permits to engage in directed and joint venture activities for Atlantic mackerel in the NWA fishery.

The respective amounts requested by each government for joint venture and directed fishing are listed below. These are followed by the list of vessels for which permit applications have been received for the fisheries and activities noted.

Country	J/V mackerel (mt)	Directed mackerel (mt)	American partner
USSR	5,000	51,000	Scan Ocean, Inc.
Poland	3,500	10,500	Scan Ocean, Inc.
Netherlands	3,000	45,000	Scan Ocean, Inc.
East Germany	8,000	22,000	Mayflower Inter. Inc.
United Kingdom, Northern Ireland	3,100	9,300	Scan Ocean, Inc.
United Kingdom	925	5,025	Scan Ocean, Inc.

Nation—Vessel name, vessel type	Application No.	Fishery	Activity
Government of the Kingdom of the Netherlands:			
<i>Alida</i> , large stern trawler	NL-89-0006	NWA	*1
<i>Prins Bernard</i> , large stern trawler	NL-89-0007	NWA	*1
<i>Cornelis Vrolijk</i> fzn, medium stern trawler	NL-89-0009	NWA	*1
<i>Zeeland</i> , large stern trawler	NL-89-0022	NWA	*1
<i>Holland</i> , large stern trawler	NL-89-0023	NWA	*1
<i>Hendrika Johanna</i> , small stern trawler	NL-89-0025	NWA	*1
<i>Dirk Dirk</i> , large stern trawler	NL-89-0026	NWA	*1
<i>Annie Hillina</i> , small stern trawler	NL-89-0027	NWA	*1
<i>Astrid</i> , large stern trawler	NL-89-0028	NWA	*1
<i>Friesland</i> , small stern trawler	NL-89-0031	NWA	*1
<i>Geertruid Marreta</i> , large stern trawler	NL-89-0032	NWA	*1
<i>Tetman Hette</i> , large stern trawler	***	NWA	*1
<i>Franziaka</i> , large stern trawler	***	NWA	*1
German Democratic Republic:			
<i>Bodo Uhse</i> , large stern trawler	GC-89-0040	NWA	*1
<i>Ehm Welk</i> , large stern trawler	GC-89-0041	NWA	*1
<i>Ludwig Renn</i> , large stern trawler	GC-89-0054	NWA	*1
<i>Lichtenhagen</i> , cargo/transport	GC-89-0055	NWA	3
<i>Reutshagen</i> , cargo/transport	GC-89-0056	NWA	3
<i>Eduard claudius</i> , large stern trawler	GC-89-0059	NWA	*1
Government of the Polish People's Republic:			
<i>Halniak</i> , cargo/transport	PL-89-0029	NWA	3
<i>Lewanter</i> , cargo/transport	PL-89-0030	NWA	3
<i>Buran</i> , cargo/transport	PL-89-0033	NWA	3
<i>Terral</i> , cargo/transport	PL-89-0086	NWA	3
<i>Zonda</i> , cargo/transport	PL-89-0102	NWA	3
<i>Solano</i> , cargo/transport	PL-89-0112	NWA	3
<i>Tornado</i> , cargo/transport	PL-89-0113	NWA	3
<i>Kublin</i> , large stern trawler	PL-89-0117	NWA	*1
<i>Kunata</i> , large stern trawler	PL-89-0021	NWA	*1
<i>Laskara</i> , large stern trawler	PL-89-0024	NWA	*1
Her Majesty's Government of the United Kingdom:			
<i>Westella</i> , medium stern trawler	***	NWA	*1
Her Majesty's Government of the United Kingdom: (Northern Ireland)			
<i>Genesis</i>	***	NWA	*1
The Government of Denmark:			
<i>Iceberg</i> , cargo/transport	DA-89-0001	NWA	3
<i>Ice Flower</i> , cargo/transport	DA-89-0003	NWA	3
<i>Iceport</i> , cargo/transport	DA-89-0004	NWA	3
<i>Ice Pearl</i> , cargo/transport	DA-89-0009	NWA	3
Government of Japan:			
<i>Takatoyo Maru No. 18</i> , longliner	JA-89-1331	ABS	1
<i>Ryuo Maru No. 28</i> , longliner	JA-89-1373	ABS	1
<i>Tom Maru No. 21</i> , longliner	JA-89-1476	ABS	1
<i>Sumi Maru No. 8</i> , longliner	JA-89-1546	ABS	1
<i>Rokunoshima Maru No. 18</i> , longliner	JA-89-1553	ABS	1
<i>Shinei Maru No. 81</i> , longliner	JA-89-1554	ABS	1
<i>Shinei Maru No. 18</i> , longliner	JA-89-1555	ABS	1

[FR Doc. 88-27503 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced and Manufactured in Burma

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral agreement between the Governments of the United States and the Socialist Republic of the Union of Burma is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see Federal Register notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of

Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 25, 1987 and September 11, 1987, between the Governments of the United States and the Socialist Republic of the Union of Burma; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in Categories 340/341/640/641/840, produced or manufactured in Burma and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limit:

Category	Twelve-Month Limit
340/341/640/641/840	280,900 dozen of which not more than 224,720 dozen shall be in Categories 340/640/840.

Imports charged to the category limit for the period January 1, 1989 through December 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balances. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit is subject to adjustment in the future pursuant to the provisions of the bilateral textile agreement between the Governments of the United States and the Socialist Republic of the Union of Burma.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27471 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in El Salvador

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the

Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1989.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current bilateral textile agreement between the Governments of the United States and El Salvador is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see Federal Register notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement, effected by exchange of notes dated March 2, 1987 and April 30, 1987, between the Governments of the United States and El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 300/301, produced or manufactured in El Salvador and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of 3,855,535 kilograms.

Imports charged to the category limits for the period January 1, 1988 through December 31, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of El Salvador.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27472 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the United Mexican States agreed to increase the current consultation levels for Categories 359-0 and 650.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice

52 FR 47745, published on December 16, 1987). Also see 53 FR 7961, published on March 11, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1988, as amended, concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on December 1, 1988, the directive of March 7, 1988 is further amended to increase the limits for cotton and man-made fiber textile products in the following categories:

Category	Amended Limit ¹
359-0 * (pounds)	350,000
650 (dozen)	31,000

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

² In Category 359-0, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27473 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

November 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Textile Agreement of July 27, 1983 and August 8, 1983.

Inasmuch as consultations held with the Government of Thailand have not resulted in a mutually satisfactory limit for Category 363, the United States Government has decided to establish a prorated limit for the period August 31, 1988 through December 31, 1988.

The United States remains committed to finding a solution concerning Category 363. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the Federal Register.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 37023, published on September 23, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on September 19, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton textile products in Category 363, produced or manufactured in Thailand and exported during the ninety-day period which began on August 31, 1988 and extends through November 28, 1988.

Effective on November 29, 1988, the directive of September 19, 1988 is amended to extend the import restraint period for Category 363 to the period August 31, 1988

through December 31, 1988 at an increased level of 5,325,229 numbers.¹

Import charges made to the ninety-day restraint period are to be retained. Charges against that ninety-day limit for the period August 31, 1988 through September 25, 1988 and 72,192 numbers.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-27474 Filed 11-28-88; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 89-C0002]

Mapco Alaska Petroleum Inc., a Corporation; Provisional Acceptance; Settlement Agreement and Order; Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the *Federal Register* in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Mapco Alaska Petroleum Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this arrangement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 14, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC, 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety

Commission, Washington, DC 20207; telephone (301) 492-6626.

Date: November 22, 1988.

Sheldon D. Butts,

Deputy Secretary.

Consumer Product Safety Commission Settlement Agreement and Order

In the matter of Mapco Alaska Petroleum Inc. a corporation, CPSC DOCKET NO. 89-C0002.

1. This Settlement Agreement and Order, entered into between Mapco Alaska Petroleum Inc., a corporation (hereinafter, "MAPI"), and the staff of the Consumer Product Safety Commission, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

2. MAPI is a corporation organized and existing under the laws of the State of Alaska with its principal corporate offices located at 1800 South Baltimore Avenue, Tulsa, Oklahoma 74101-0645.

3. The staff is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 5 of the CPSA, 15 U.S.C. 2053.

II. Jurisdiction

4. MAPI, through its North Pole (Alaska) Refinery, manufactured and "distributed in commerce" No. 2 fuel oil for use as furnace fuel in homes in the state of Alaska, within the meaning of the term "distributed in commerce" in section 3(a)(11) of the CPSA, 15 U.S.C. 2052(a)(11). That No. 2 fuel oil is a "consumer product" and MAPI is a "manufacturer" within the meaning of sections (3)(1)(1) and 3(a)(4) of the Consumer Product Safety Act (hereinafter, the "CPSA"), 15 U.S.C. 2052(a)(1) and 2052(a)(4).

III. Product

5. No. 2 fuel oil as Used as heating fuel for homes, in addition to its other uses. The "low pour" No. 2 fuel oil manufactured by MAPI contains approximately 40% kerosene. The kerosene lowers the pour-point of No. 2 fuel oil, thereby assisting the flow of the fuel to the furnace during cold weather.

IV. Alleged Defect

6. Between December 1982, and October 1983, MAPI lowered the kerosene content of the No. 2 fuel oil, and added a pour-point depressant, a recognized additive to No. 2 fuel oil. Pour-point depressant assists the flow of

the No. 2 fuel oil during the cold weather in Alaska, and therefore was a substitute for the kerosene MAPI blended into its No. 2 fuel oil. In August-September 1983, when the kerosene content of the No. 2 fuel oil was reduced to little or none, some furnaces experienced sooting and smoking problems, which furnaces, prior to September 1983, had operated satisfactorily with the MAPI's original No. 2 fuel oil formulation in the Fairbanks, Alaska area. In excess of 2100 incidents of soot and smoke damage, and at least three house fires, were allegedly associated with the reformulated No. 2 fuel oil. The Commission has no knowledge of any incidents of death or injuries associated with the reformulated No. 2 fuel oil. The CPSC staff alleges that consumers could suffer burn injuries or death as a result of fire resulting from these kinds of incidents.

V. Alleged Failure to Comply With the Reporting Requirements

7. The staff alleges that MAPI knew or should have known that the reformulated No. 2 fuel oil contained a defect which could create a substantial product hazard, but MAPI did not report to the Commission the problems associated with the No. 2 fuel oil as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VI. Allegations of MAPI

8. MAPI denies the staff's allegations that there is a defect in the No. 2 fuel oil. MAPI further denies that the No. 2 fuel oil contains a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.A. 2064(a). MAPI also denies the existence of any obligation to report any information regarding the No. 2 fuel oil to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VII. Agreement of the Parties

9. MAPI and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

10. MAPI agrees to pay the Commission a civil penalty in the amount of one hundred and seventy-five thousand dollars (\$175,000), payable within thirty (30) days after service of the Final Order of the Commission accepting this Settlement Agreement.

11. MAPI makes no admission of, and expressly denies, any fault or liability

¹ The restraint limit has not been adjusted to account for any imports exported after August 30, 1988.

regarding the No. 2 fuel oil. The Commission does not make any determination that the No. 2 fuel oil contains a defect which could create a substantial product hazard or that violation of the CPSA has occurred.

12. Upon final acceptance of this Settlement Agreement by the Commission, MAPI knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a determination by the Commission as to whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of laws.

13. MAPI agrees to the issuance and distribution by the Consumer Product Safety Commission of the Settlement Agreement and Order. Final Order, and press release (appended hereto as "Exhibit A") involving this matter.

14. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the *one hundred and seventy-five thousand dollars* (\$175,000) settlement amount by MAPI, the Commission agrees to waive its right to pursue against MAPI any penalty proceeding or any other action under the laws administered by the Commission regarding the reformulated No. 2 fuel oil which is the subject of this settlement agreement.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in the 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

16. The parties further agree that the Order attached hereto as "Exhibit B" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2501 *et seq.*, and that a violation of the Order (i.e., nonpayment of the \$175,000) shall subject MAPI to appropriate legal action.

17. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or contradict its terms.

MAPCO Alaska Petroleum Inc.

Dated: September 9, 1988.

Randolph L. Jones, Jr.,

Secretary and General Counsel, MAPCO
Alaska PETROLEUM Inc.

Commission Staff:

David Schmeltzer,

Associate Executive Director, Directorate for
Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative
Litigation.

Dated: September 19, 1988.

Earl A. Gershenow

Trial Attorney, Division of Administrative
Litigation, Counsel for the Commission staff.

Exhibit A—Alleged Reporting Violation Settled by Alaskan Oil Firm

Washington, DC—The U.S. Consumer Product Safety Commission today announced that MAPCO Alaska Petroleum Inc. (MAPI) of Tulsa, Oklahoma has agreed to pay the Commission \$175,000 to resolve Commission staff allegations that the company failed to report a defect in its No. 2 fuel oil in the fall of 1983 as required by the Consumer Product Safety Act (CPSA). MAPI denies the existence of a substantial product hazard or that it violated the reporting requirements of the CPSA.

The staff has alleged that a change in the formulation of MAPI's No. 2 fuel oil resulted in more than 2,100 incidents of smoke and soot damage, and was associated with at least three house fires. MAPI never reported these incidents to the Commission. The Commission has no knowledge of any injuries or deaths associated with the use of the No. 2 fuel oil.

The No. 2 fuel oil was sold to distributors who delivered the fuel to households in the Alaska Interior. Following complaints in September and October of 1983 of furnace problems associated with its No. 2 fuel oil, MAPI promptly and voluntarily investigated and remedied consumer complaints concerning the No. 2 fuel oil and resumed production of its original No. 2 fuel oil formulation.

For additional information, consumers can call the CPSC toll free hotline number, 800-638-2772. A teletypewriter number for the hearing impaired is 800-638-8270; the teletypewriter number for Maryland is 1-800-492-8104.

Exhibit B—Consumer Product Safety Commission

In the matter of Mapco Alaska Petroleum
Inc. a corporation

Order

The Commission has considered the
allegations of the staff charging

Respondent with violating the reporting requirement of section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2051, 2064(b); and, the Respondent and counsel for the Commission have executed an agreement containing a provision for the payment of a civil penalty in settlement of the staff allegations, an admission for settlement purposes only by the Respondent of all jurisdictional facts, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law been violated. All other requirements for consent order agreements set forth in 16 CFR 1115.20(b) (Substantial Product Hazard Reports) and 16 CFR 1118.20 Investigations, Inspections and Inquiries under the Consumer Product Safety Act) have been satisfied. The Commission, makes the following jurisdictional findings, and enters the following order:

1. Respondent *MAPCO Alaska Petroleum Inc.* (hereinafter, "MAPI") is a corporation organized and existing under the laws of the state Alaska with its principal corporate offices located at 1800 South Baltimore Avenue, Tulsa, Oklahoma 74101-0645.

2. The Consumer Product Safety Commission has jurisdiction of the subject matter of this proceeding and of the Respondent.

3. It appearing that the Settlement Agreement is in the public interest and is otherwise proper and appropriate, it is hereby:

Ordered, that *MAPCO Alaska Petroleum Inc.* shall pay to the Order of the United States Treasurer, the sum of *one hundred and seventy-five thousand and 00/100* (\$175,000.00), in full settlement of any and all claims whatsoever by the Consumer Product Safety Commission arising out of the allegations of the Commission staff set forth in the Settlement Agreement. The aforesaid civil penalty shall be due within thirty (30) days after service on MAPI of the Final Order, with payment to be delivered to David Schmeltzer, Associate Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Room 240, Bethesda, Maryland 20207.

Provisionally accepted on the 22nd day of
November, 1988.

By Order of the Commission.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety
Commission.

[FR Doc. 88-27405 Filed 11-29-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE**Public Information Collection
Requirement Submitted to OMB for
Review***Action: Notice.*

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Officer Characteristics Survey; No Form; and No OMB Control Number.

Type of Request: Expedited
Submission—approval date requested:
December 1, 1988.

Average Burden Hours/Minutes Per Response: 26 minutes.

Frequency of Response: One-time.

Number of Respondents: 1,500.

Annual Burden Hours: 650.

Annual Responses: 1,500.

Needs and Uses: The Air Force needs the information asked for in the survey to see if there is any correlation between precommissioning characteristics, background and retention. The results will be used to provide additional information for use by commissioning sources in determining the best candidates for officer training.

Affected Public: Individuals or households.

Respondents Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 22, 1988.

BILLING CODE 3810-01-M



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR TRAINING COMMAND (ATC)
RANDOLPH AIR FORCE BASE TX 78150-5001

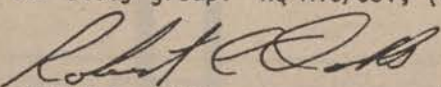
8 NOV 1988

REPLY TO
ATTN OF CC

SUBJECT Officer Background Characteristics

TO Current or Former Air Force Officer

1. We need your help. Please give us 26 minutes of your time.
2. You have been selected to participate in an extensive investigation of Air Force officer characteristics. Your input will be used in a study of Air Force officer precommissioning attributes. No matter where you are in your Air Force career or where it ended, we request your input. The purpose of our study is to examine a wide variety of characteristics to see if they influence a person's length of military service. The results will be used in reevaluating Air Force commissioning policies.
3. You can help by completing the attached survey. We need you to return the answer sheet and any comments as soon as possible, preferably within five working days. If you have any questions or comments, please contact our study group: HQ ATC/CSY, (512) 652-3100.


ROBERT C. OAKS
Lieutenant General, USAF
Commander

3 Atch

1. Officer Characteristics Survey
2. Answer Sheet
3. Return Envelope

F

UNITED STATES AIR FORCE

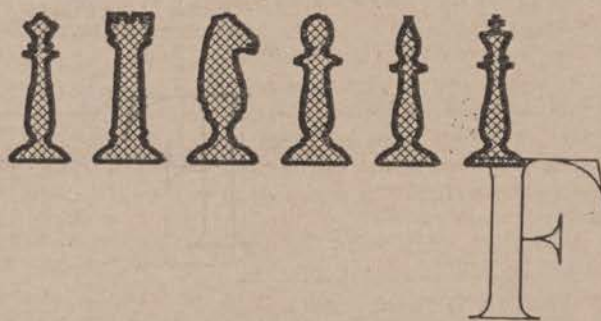


SEPTEMBER 18, 1947

T



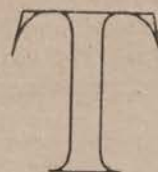
R OFFICER
CHARACTERISTICS
SURVEY
A



OMB Approval No.

Expires 1 Mar 89

USAF SCN 88-102



Survey Approved
OMB No. 0701-xxxx
Expires

IMPORTANT -- PLEASE READ !!!

Your help in completing this survey is extremely important to us -- you know better than anyone else the details of your background and influences on your career. Most of this information is not contained on any 'data file' -- you are the only source we have for it. By responding honestly to these questions, you will help us improve our understanding of the types of people who join the Air Force and enhance recruitment and selection procedures. A comments section is provided at the end of the survey since there may be issues we have overlooked.

To shorten the length of this survey, we eliminated those questions for which data is already maintained. We ask that you provide your social security account number (SSAN) on your answer sheet so we can match that data with your survey responses. However, your responses will be kept strictly confidential, and will be used only in combination with the responses of others. Your individual responses will not be shared with your supervisor or anyone else, nor will they be used for personnel actions of any type. Your responses will be used for study purposes only and will not go into Air Force or any other personnel files. Of course, you are not required to answer any question which is unclear or to which you object.

PRIVACY ACT STATEMENT: In accordance with AFR 10-36, paragraph 8, the following information is provided as required by the Privacy Act of 1974. Authority: AFR 30-23, Air Force Personnel Survey Program; 10 U.S.C. 8012, Secretary of the Air Force; powers and duties; delegation by; Executive Order 9397, 22 November 1943.

Purpose: To obtain information from current and former Air Force members regarding the attributes of Air Force officers.

Routine Use: To analyze information about the attributes of Air Force officers. The survey data collected from individuals will be merged by grade-groups and in no case will data be analyzed by individual responses.

Participation: Participation in this survey, and furnishing of the Social Security Account Number (SSAN), is VOLUNTARY. No adverse action will be taken against any member who elects not to participate in any or all of this survey or to supply the SSAN.

OMB NOTICE: Public reporting burden for this collection of information is estimated to average 26 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0701-xxxx), Washington, DC 20503.

INSTRUCTIONS

D

LOCATE THE BOX BELOW IN THE TOP LEFT CORNER OF YOUR ANSWER SHEET

GRADE		RACE	TA/MS	MISC/DIA	YOB	MISCELLANEOUS									
1	X		0 0	0 0	0 0	0 0 0 0 0 0 0 0 0 0									
2			1 1	1 1	1 1	1 1 1 1 1 1 1 1 1 1									
3			2 2	2 2	2 2	2 2 2 2 2 2 2 2 2 2									
4			3 3	3 3	3 3	3 3 3 3 3 3 3 3 3 3									
5			4 4	4 4	4 4	4 4 4 4 4 4 4 4 4 4									
6			5 5	5 5	5 5	5 5 5 5 5 5 5 5 5 5									
7			6 6	6 6	6 6	6 6 6 6 6 6 6 6 6 6									
8			7 7	7 7	7 7	7 7 7 7 7 7 7 7 7 7									
9			8 8	8 8	8 8	8 8 8 8 8 8 8 8 8 8									
			9 9	9 9	9 9	9 9 9 9 9 9 9 9 9 9									

R

Please mark your SSAN in the numeric grid marked MISCELLANEOUS. All other blocks in the box may be left blank.

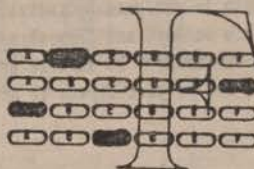
Select only one answer to each question except where instructions indicate otherwise. Make any additional comments on the comment sheet at the end of this survey. (Please be sure to detach and return the comments sheet if you made any comments.)

Mark your answers on the answer sheet provided. Please use a No. 2 pencil.

Be sure to mark your answers carefully so that you enter them opposite the same answer sheet number as survey question number.

Be sure that your answer marks are heavy and that you blacken the oval shaped space. Erase all changes completely and carefully so as not to tear the answer sheet.

Right Way
to Mark
Answer Sheet



Wrong Way
to Mark
Answer Sheet



Do not staple or otherwise damage the answer sheet as the electronic scanner will not read the form, and your input will be rejected.

T

GEOGRAPHICAL BACKGROUND: Questions 1 - 3 ask about where you lived while growing up. Please answer all questions to the best of your knowledge/recollection.

1. How many times did your family move, from the time you were 8 until you were 17 years old?

- A) Never
- B) Once
- C) Twice
- D) 3 - 4 times
- E) 5 or more times

2. What was the size of the community in which you were living when you graduated from high school? (knowledge/recollection)

- A) Less than 500
- B) 500 - 5,000
- C) 5,001 - 25,000
- D) 25,001 - 50,000
- E) 50,001 - 250,000
- F) 250,001 - 500,000
- G) Over 500,000

3. In which of the following geographical locations were you living when you graduated from high school?

- A) New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
- B) Upper Mid-Atlantic (New Jersey, New York)
- C) Lower Mid-Atlantic (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
- D) Southeast (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
- E) Midwest (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
- F) North Central (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
- G) Central (Iowa, Kansas, Missouri, Nebraska)
- H) South Central (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
- I) Northwest (Idaho, Oregon, Washington)
- J) West (Arizona, California, Nevada)
- K) Alaska/Hawaii
- L) Other Non-CONUS locations (Puerto Rico, Virgin Islands, American Samoa, Guam, other American territories, foreign countries)

FAMILY BACKGROUND: Questions 4 - 13 ask about your family while you were growing up.

4. By whom were you primarily raised during your childhood (8 - 17 years old)?

- A) Both parents/guardians, in the same household
- B) Father (or male guardian) alone, due to divorce/separation
- C) Mother (or female guardian) alone, due to divorce/separation
- D) Father (or male guardian) alone, due to death of mother
- E) Mother (or female guardian) alone, due to death of father
- F) Father (or male guardian), after remarriage
- G) Mother (or female guardian), after remarriage
- H) Other

5. While growing up, how many brothers and/or sisters did you have that were older than you?

- A) 0
- B) 1
- C) 2
- D) 3
- E) 4 or more

6. While growing up, how many brothers and/or sisters did you have that were younger than you?

- A) 0
B) 1
C) 2

- D) 3
E) 4 or more

7. While growing up, how many brothers (either older or younger) did you have?

- A) 0
B) 1
C) 2

- D) 3
E) 4 or more

8. What was the principal wage-earner's primary occupation in your family, during the time you were 8-17 years old?

- A) Military
B) Professional, Technical and Related (teacher, registered nurse, social worker, writer, artist, etc.)
C) Managerial/Administrative (accountant, labor relations specialist, school principal, office manager, etc.)
D) Sales/Technical (health technologist, computer programmer, licensed practical nurse, sales supervisor, cashier, etc.)
E) Clerical (secretary, bookkeeper, telephone operator, etc.)
F) Crafts (plumber, carpenter, precision textile machine worker, etc.)
G) Operative, except Transport (assembler, sewing machine operator, hand work, etc.)
H) Transport Equipment Operator (bus driver, crane operator, etc.)
I) Laborer, except Farm (hand packager, production helper, etc.)
J) Service, including Private Household (food preparation and service worker, building cleaner/other service worker, private household worker, etc.)
K) Farm Laborer
L) Self-Employed (including small business, farmer, etc.)

9. At the time you graduated from high school, in what category was your family's combined income?

- A) Upper
B) Upper-Middle

- C) Lower-Middle
D) Lower

10. At the time you graduated from high school, what was the highest education level your mother/female guardian had attained? (If you had more than one female guardian, refer to the one who primarily raised you)

- A) N/A, no mother or female guardian
B) Completed grade school or less
C) Some high school
D) Completed high school/equivalent (e.g. GED)
E) Attended/completed technical/trade school
F) Some college
G) Completed college
H) Some graduate or professional school after college
I) Completed graduate or professional school after college

11. At the time you graduated from high school, what was the highest education level your father/male guardian had attained? (If you had more than one male guardian, refer to the one who primarily raised you)

- A) N/A, no father or male guardian
B) Completed grade school or less
C) Some high school
D) Completed high school/equivalent (e.g. GED)
E) Attended/completed technical/trade school
F) Some college
G) Completed college
H) Some graduate or professional school after college
I) Completed graduate or professional school after college

12. Which statement best describes your mother/female guardian in terms of discipline?

- A) Did not live with mother/female guardian
B) Very lenient
C) Pretty lenient
D) In between
E) Pretty strict
F) Very strict

13. Which statement best describes your father/male guardian in terms of discipline?

- A) Did not live with father/male guardian
B) Very lenient
C) Pretty lenient
D) In between
E) Pretty strict
F) Very strict

MILITARY EXPOSURE: Questions 14 - 23 ask about your awareness/exposure to the military prior to entry.

14. At what age did you first become interested in joining the military?

- A) 11 or younger
B) 12 - 14
C) 15 - 17
D) 18 - 22
E) 23 or older

15. During your childhood, how many times did you visit a military installation?

- A) Never
B) 1 - 2
C) 3 - 5
D) 6 - 10
E) 11 or more
F) Was a military dependent for all or part of the time

16. During your childhood, how close to any military installation did you ever live?

- A) Lived on a military installation for at least part of my childhood
B) Within 10 miles
C) 11 - 25 miles
D) 26 - 50 miles
E) 51 - 100 miles
F) Over 100 miles
G) Don't know

17. Was either parent/guardian ever a military member (active duty, guard or reserve)?

- A) No, neither parent was ever a military member (Skip to question 23)
B) Yes, and he/she separated/was discharged before retirement
C) Yes, and he/she retired from the military
D) Yes, and he/she is still serving

18. In what branch of the service was your father/mother/guardian? (Mark all that apply)

- A) Air Force C) Army E) Coast Guard
B) Navy D) Marines

19. In what service component did your father/mother/guardian serve? (Mark all that apply)

- A) Active Duty B) Guard C) Reserve

20. At the time you graduated from high school, how many years had it been since either parent/guardian separated/retired from the military?

- A) 18 years or more - they separated/retired before I was born
B) 13 - 17 years
C) 9 - 12 years
D) 5 - 8 years
E) 1 - 4 years
F) 0 years - they were in the military when I graduated

21. What was the highest rank your parent/guardian attained while in military service? (Give highest rank if both parents were military members)

- A) E-1 through E-3
B) E-4 through E-6
C) E-7 through E-9
D) W-1 through W-4
E) O-1 through O-3
F) O-4 through O-5
G) O-6 or above

22. Was either parent/guardian a military aircrew member?

- A) No - not an aircrew member
 B) Yes - pilot
 C) Yes - navigator
 D) Yes - other aircrew member

23. Which of the following individuals were military members during your childhood (age 8 to 17)? (Mark all that apply)

- | | |
|----------------------------|---------------------------------------|
| A) Father/male guardian | H) Close childhood/high school friend |
| B) Mother/female guardian | I) Friend of the family |
| C) Brother | J) Individual(s) in my neighborhood |
| D) Sister | K) ROTC instructor in my high school |
| E) Aunt/uncle | L) Member of my religious church |
| F) Cousin | M) None of the above |
| G) Grandfather/grandmother | |

INITIAL DECISION FACTORS: Questions 24 - 36 ask about your decision to join the military.

For questions 24 - 33 use the rating scale below to indicate how important each of the following factors was in your decision to enter the Air Force.

- A) Not at all important
 B) Slightly important
 C) Moderately important
 D) Very important
 E) Extremely important

A

24. Opportunity to serve my country
25. Eligibility for the draft
26. Opportunity to make the world a better place
27. Steady work/job security
28. Good pay
29. Continuing a family tradition of military service
30. Better job/promotion opportunities than in civilian life
31. Opportunity for training /education
32. Good benefits
33. Opportunity to fly

F

T

34. What was the reaction of your immediate family to your decision to join the military/become an Air Force officer?

- D**
- A) Very unsupportive
 - B) Unsupportive
 - C) Neutral
 - D) Supportive
 - E) Very supportive
 - F) Do not know

35. What was the reaction of most of your friends to your decision to join the military/become an Air Force officer?

- IR**
- A) Very unsupportive
 - B) Unsupportive
 - C) Neutral
 - D) Supportive
 - E) Very supportive
 - F) Do not know

36. Which of the following influences first made you think about entering the military?

- A**
- A) Family member (in the military)
 - B) Family member (not in the military)
 - C) Friend (in the military)
 - D) Friend (not in the military)
 - E) Teacher/Counselor
 - F) TV/Movie
 - G) Visit to a military base/post
 - H) Opportunity to attend a service academy
 - I) Scholarship opportunity

INITIAL EXPECTATIONS AND EXPERIENCES: Questions 37 - 42 ask about your expectations regarding the Air Force and experiences on active duty.

37. Think back to when you were first commissioned. What was your intent with regard to making the Air Force a career?

- IF**
- | | |
|---|--|
| A) Definitely would make the Air Force a career | E) Leaned toward <u>not</u> making the Air Force a career |
| B) Probably would make the Air Force a career | F) Probably would <u>not</u> make the Air Force a career |
| C) Leaned toward making the Air Force a career | G) Definitely would <u>not</u> make the Air Force a career |
| D) Undecided | |

38. Upon commissioning, what was the highest grade you realistically expected to achieve before you separated or retired from the Air Force?

- T**
- | | |
|-----------------------|---------------|
| A) General Officer | D) Major |
| B) Colonel | E) Captain |
| C) Lieutenant Colonel | F) Lieutenant |

39. How well did your first Air Force assignment make use of your undergraduate education?

- A) Extremely well
- B) Very well
- C) Moderately
- D) Not very well
- E) Not at all

40. What are your current intentions toward remaining in the Air Force for at least 20 years?

- A) N/A, have already separated before retirement
- B) N/A, already completed 20 or more years or retired
- C) Definitely will remain
- D) Probably will remain
- E) Lean toward remaining
- F) Undecided
- G) Lean toward not remaining
- H) Probably will not remain
- I) Definitely will not remain (have not yet established a date of separation)
- J) I have an established date of separation

41. In terms of influencing your career decision, what is the most positive aspect of the Air Force?

- A) Opportunity for training and education
- B) My Air Force job (challenge, satisfaction, etc)
- C) Pay and allowances
- D) Aviation Career Incentive Pay (ACIP)
- E) Promotion system and opportunity
- F) Quality of leadership and supervision at the unit level
- G) Quality of leadership and supervision above the unit level
- H) Institutional benefits (hospital, BX, etc)
- I) Travel and new experiences
- J) Have 'say' in future assignments
- K) Security of Air Force life
- L) Opportunity to make changes in job/ organizations
- M) Retirement benefits
- N) Opportunity to serve my country
- O) The people
- P) More attractive than civilian jobs

42. In terms of influencing your career decision, what is the most negative aspect of the Air Force?

- A) Family separation
- B) Lack of opportunity for training and education
- C) My Air Force job (not challenging, limited satisfaction, etc)
- D) Pay and allowances
- E) Aviation Career Incentive Pay (ACIP)
- F) Promotion system and opportunity
- G) Quality of leadership and supervision at the unit level
- H) Quality of leadership and supervision above the unit level
- I) Institutional benefits (hospital, BX, etc)
- J) Frequent PCS moves
- K) Little 'say' in future assignments
- L) Working conditions (long hours, environment, etc)
- M) Lack of opportunity to make changes in job/organizations
- N) Possible erosion of retirement benefits
- O) The people
- P) Less attractive than civilian jobs
- Q) Incompatibility with spouse's career

PREVIOUS EMPLOYMENT: Questions 43 - 47 ask about your employment prior to entering active duty in the military.

43. What was the longest period of time you ever held the same full- or part-time paying job of any kind prior to entering active duty in the military

- A) Never had a job prior to entering the military
- B) Less than 2 months
- C) 2 - 6 months
- D) 7 - 11 months
- E) 1 - 2 years
- F) More than 2 years

44. How many years during grades 9 - 12 did you work an average of 10 or more paid hours per week? (excluding summer employment)

- A) 0
- B) 1
- C) 2
- D) 3
- E) 4 or more

45. How many years during college (prior to entering active duty in the military) did you work an average of 10 or more paid hours per week? (excluding summer employment)

- A) 0
- B) 1
- C) 2
- D) 3
- E) 4 or more

46. How many years during grades 9 - 12 did you work an average of 5 or more volunteer hours per week?

- A) 0
- B) 1
- C) 2
- D) 3
- E) 4 or more

47. How many years during college (prior to entering active duty in the military) did you work an average of 5 or more volunteer hours per week?

- A) 0
- B) 1
- C) 2
- D) 3
- E) 4 or more

HIGH SCHOOL ACTIVITIES: Questions 48 - 55 ask about your high school and any extracurricular activity involvement.

48. What was the size of your high school graduating class?

- A) Less than 50
- B) 50 - 100
- C) 101 - 500
- D) 501 - 1000
- E) Over 1000
- F) N/A - GED

49. What was your relative class standing upon graduation from high school?

- A) Valedictorian
- B) Salutatorian
- C) Upper 5%
- D) Upper 10%
- E) Upper 25%
- F) Upper 50%
- G) Lower 50%
- H) N/A - GED

50. From what kind of high school did you receive your diploma?

- A) Public
- B) Religious
- C) Military
- D) On-base/military dependents' school
- E) Other
- F) N/A - GED

51. During high school, did you participate in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply) (Continued in next question)

- A) Boys'/Girls' State/Nation
B) National Honor Society/Beta Club
C) Academic/Prep Bowl Team
D) Chorus/Choir
E) Band/Orchestra
F) Drill Team
G) Debate Team/Squad
H) Drama
I) Cheerleading

- J) Junior ROTC
K) Camp Counselor
L) 4H/FFA
M) Big Brother/Big Sister
N) Key Club, Interact, or Similar Service Orgs
O) Boys/Girls Club/YMCA/YWCA
P) Junior Achievement
Q) Religious Group (e.g. Youth Fellowship)

52. During high school, did you participate in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply)

- A) Foreign Exchange Club/Student
B) Civil Air Patrol
C) Boy Scouts/Girl Scouts/Campfire/etc.
D) Honors/Accelerated/Advanced Placement Courses
E) Science/Math Club
F) Foreign Language Club

- G) Literary/Fine Arts Club
H) Science Fair
I) Youth Sports League
J) Journalism
K) Varsity Sports Manager
L) Student Government

53. During high school, were you an officer, director, or student leader of any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply)

- A) Boys'/Girls' State/Nation
B) National Honor Society/Beta Club
C) Chorus/Choir
D) Band/Orchestra
E) Drill Team
F) Debate Team/Squad
G) Drama Club
H) Junior ROTC
I) 4H/FFA
J) Key Club, Interact, or Similar Service Org
K) Boys/Girls Club/YMCA/YWCA

- L) Junior Achievement
M) Religious Group
N) Foreign Exchange Club
O) Civil Air Patrol
P) Boy Scouts/Girl Scouts/Campfire, etc.
Q) Science/Math Club
R) Foreign Language Club
S) Literary/Fine Arts Club
T) Student Government
U) Journalism

54. During high school, did you win school-wide, area, regional, state, or national awards/honors in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply) (Continued in next question)

- A) Chorus/Choir
B) Band/Orchestra
C) Daughters of the American Revolution
D) Drill Team
E) Debate Team/Squad
F) Drama
G) Junior ROTC

- H) 4H/FFA
I) Junior Achievement
J) Civil Air Patrol
K) Boy Scouts/Girl Scouts/Campfire, etc.
L) Science Fair
M) National Merit Semi-Finalist/Finalist/Scholar

65. During high school, did you win school-wide, area, regional, state, or national awards/honors in any of the following organizations or activities? (Mark all that apply) (Leave blank if none apply)

- A) Mathematics
B) Science
C) Social Studies
D) English
E) Foreign Language

- F) General Academics
G) American Legion/Citizenship Award
H) Journalism
I) Creative Writing
J) Art

ATHLETIC PARTICIPATION: Questions 56 - 62 ask about your participation in both high school and college athletic teams. Please use the following list of sports to answer these questions. (Leave blank if none apply)

- A) Baseball/Softball
B) Basketball
C) Bowling
D) Boxing
E) Crew
F) Diving/Swimming
G) Football
H) Golf
I) Gymnastics
J) Ice/Field Hockey
K) Lacrosse

- L) Rugby
M) Skiing
N) Soccer
O) Squash/Handball/Bacquetball
P) Tennis
Q) Track/Cross Country
R) Volleyball
S) Water Polo
T) Wrestling
U) Other

56. Please mark all the varsity sports in which you participated for at least one season in high school.

57. Please mark all the varsity sports in which you lettered in high school.

58. Please mark all the varsity sports in which you were a team captain in high school.

59. Please mark all the intercollegiate sports in which you participated for at least one season in college (before you were commissioned).

60. Please mark all the intramural/club/community league sports in which you participated for at least one season in college (before you were commissioned).

61. Please mark all the intercollegiate sports in which you lettered in college (before you were commissioned).

62. Please mark all the intercollegiate sports in which you were a team captain in college (before you were commissioned).

COLLEGE ACTIVITIES: Questions 63 - 70 ask about your college experience and activity participation.

63. Whether you accepted them or not, what college scholarship offers did you receive as a high school senior?
(Mark all that apply)

- A) No scholarship offers
- B) Service Academy appointment
- C) ROTC
- D) Academic
- E) Athletic
- F) Civic/business organization sponsorship
- G) Other

Questions 64 - 66 ask about your college activities. Please use the following list to answer these questions.

- A) Social Fraternity/Sorority
- B) Intramural/Club Sports
- C) Student Government
- D) Professional Organization/Society
- E) National Honor/Recognition Society (Professionally-Oriented) (Alpha Epsilon Delta, Psi Chi, etc.)
- F) National Honor Organization (Academically-Oriented) (Phi Beta Kappa, etc.)
- G) Academic Recognition (Graduation with honors, cum laude, etc.)
- H) Religious Organizations
- I) Student Organization Control Board
- J) Service Organization
- K) Debate Team/Squad
- L) Sports League Coach/Sports manager
- M) Scouting/Scouting Leader
- N) Drill Team
- O) Band/Orchestra, Chorus
- P) Drama/Art
- Q) Journalism (Campus Paper, Annual, etc.)
- R) Campus Radio Station
- S) Civil Air Patrol
- T) Big Brother/Big Sister
- U) Political Group or Campaign

64. Did you participate in any of these organizations or activities in college? (Mark all that apply) (Leave blank if none apply)

65. Were you an officer, director, or student leader of any of these organizations or activities in college? (Mark all that apply) (Leave blank if none apply)

66. Did you win school-wide, area, regional, state, or national awards/honors in any of the following organizations/activities in college? (Mark all that apply) (Leave blank if none apply)

67. What was your intended college major when you started college?

- A) Did not know/undecided
- B) Business Administration or Management
- C) Social Sciences (e.g., Psychology, Geography, Political Science, History)
- D) Humanities (e.g., English, Foreign Languages, Philosophy)
- E) Engineering
- F) Physical Science (e.g., Chemistry, Biology, Physics)
- G) Mathematics
- H) Computer Science
- I) Pre-Medical/Pre-Law
- J) Other

68. How many times did you change your undergraduate academic major?

- A) Never
- B) Once
- C) Twice
- D) Three or more times

69. On a 4-point grading scale, what was your overall college grade point average?

- A) 3.76 - 4.0
- B) 3.51 - 3.75
- C) 3.26 - 3.50
- D) 3.01 - 3.25
- E) 2.76 - 3.00
- F) 2.51 - 2.75
- G) 2.26 - 2.50
- H) 2.00 - 2.25
- I) Below 2.00

70. What was the highest cadet/OT position you held in your commissioning program?

- | | |
|------------------------------------|------------------------------------|
| A) Element/Squad leader | E) Group/wing staff/division chief |
| B) Flight commander | F) Group/wing deputy commander |
| C) Squadron staff | G) Group/wing commander |
| D) Squadron commander/branch chief | |

LIFE EVENTS: Questions 71 - 87 ask about certain events and activities that may have occurred in your life.

For questions 71 - 84, please use the following scale to indicate when these events first occurred.

- A) Never did this
B) Age 14 or younger
C) Age 15-17
D) Age 18-22
E) Age 23 or older
F) Don't recall age

71. Held a paying job outside the home

72. Went out on a date

73. Ran away from home for more than one day

74. Smoked cigarettes

75. Tuned up a car

76. Received a private pilot's license

77. Received a traffic ticket (moving violation)

78. Convicted of a non-driving offense (shoplifting, vandalism, etc.)

79. Got drunk

80. Bought your own car

81. Spent a week or more away from your family

82. Rode in a small airplane

83. Skipped a class in school

84. Went to the principal's/vice principal's office for disciplinary reasons

85. Which of the following best describes your religious membership and attendance during most of your childhood (8 - 17 years)? (Mark only one)

- A) Not a religious group member, no regular attendance
B) Not a religious group member, attended anyway
C) Religious group member, no regular attendance
D) Religious group member, attended regularly

86. Were you married before you entered your commissioning program?

- A) No
B) No, but I married part way through the program
C) Yes, I was married prior to entering my commissioning program
D) Yes, I was married at one time but divorced prior to entering the program

87. Which of the following types of motorized equipment had you operated prior to commissioning? (Mark all that apply)

- | | | |
|----------------------------------|----------------------|-----------------------------------|
| A) Auto - Automatic transmission | F) Dune buggy | K) Chain saw |
| B) Auto - Manual transmission | G) Farming equipment | L) Heavy Equipment (construction) |
| C) Motorboat | H) Snowmobile | M) Forklift |
| D) Airplane | I) Power saw | |
| E) Motorcycle | J) Grinder/Lathe | |

FLYING INTEREST AND EXPERIENCE: Questions 88 - 93 ask about your interests and experiences concerning flying and pilot training. Please answer all questions if you were ever interested in flying/becoming an Air Force pilot.

88. At what age did you first become interested in being a pilot?

- A) N/A - I was never interested in being a pilot (Skip to comment sheet)
B) 11 or younger
C) 12 - 14
D) 15 - 17
E) 18 - 22
F) 23 or older

89. Did you receive a pilot rating before you received your commission?

- A) No
B) Yes, I received a private pilot's license only
C) Yes, I received another rating in addition to a private pilot's license (commercial, instrument, etc.)

90. How many flying hours did you have before you received your commission?

- A) None
B) 1 - 10
C) 11 - 40
D) 41 - 100
E) 101 - 200
F) 201 or more

91. Which of the following best describes your participation in Undergraduate Pilot Training (UPT or UPT-H)?

- A) Did not apply
- B) Applied, but not physically qualified
- C) Applied and physically qualified, but not selected
- D) Selected but declined to attend
- E) Entered UPT/UPT-H but eliminated voluntarily
- F) Entered UPT/UPT-H, but eliminated involuntarily
- G) Completed UPT/UPT-H

92. When you entered pilot training, what type of aircraft did you want to fly after graduation from UPT/UPT-H?

- | | |
|--|---------------|
| A) Did not go to UPT/UPT-H | F) Fighter |
| B) Undecided--not knowledgeable of options | G) Bomber |
| C) Undecided--no preference | H) Trainer |
| D) Tanker | I) Helicopter |
| E) Transport | |

93. When you graduated from pilot training, what type of aircraft did you want to fly? (Regardless of actual assignment)

- | | |
|--|---------------|
| A) N/A - Did not graduate from UPT/UPT-H | F) Fighter |
| B) Undecided--not knowledgeable of options | G) Bomber |
| C) Undecided--no preference | H) Trainer |
| D) Tanker | I) Helicopter |
| E) Transport | |

PLEASE FEEL FREE TO ADD ANY ADDITIONAL COMMENTS YOU MAY HAVE ON THIS SURVEY:
(If you have comments, please detach this sheet and return it with your answer sheet.)

R

A

IMPORTANT: PLEASE READ

F

Check to make sure you correctly encoded your SSAN in the numeric grid marked MISCELLANEOUS and completely blackened each circle for the responses you chose (items 1 - 93). Place the answer sheet and this sheet (if you added comments) in the return envelope provided and mail to HQ ATC/CSY, Randolph AFB, TX 78150-5001. If you have any questions or comments, please call HQ ATC/CSY at AV 487-3100 or commercial (512) 652-3100.

**THANK YOU FOR TAKING THE TIME
TO PARTICIPATE IN THIS SURVEY**

T

AIR FORCE SAMPLE SURVEY ANSWER SHEET

GRADE	SEX	RACE	TAFMS	MACOM	YOB	MISCELLANEOUS
1			0	0	0	0 0 0 0 0 0 0 0
2			1	1	1	1 1 1 1 1 1 1 1
3			2	2	2	2 2 2 2 2 2 2 2
4			3	3	3	3 3 3 3 3 3 3 3
5			4	4	4	4 4 4 4 4 4 4 4
6			5	5	5	5 5 5 5 5 5 5 5
7			6	6	6	6 6 6 6 6 6 6 6
8			7	7	7	7 7 7 7 7 7 7 7
9			8	8	8	8 8 8 8 8 8 8 8
			9	9	9	9 9 9 9 9 9 9 9

36 A B C D E F G H I J K L M N O P Q R S T U

37 A B C D E F G H I J K L M N O P Q R S T U

38 A B C D E F G H I J K L M N O P Q R S T U

39 A B C D E F G H I J K L M N O P Q R S T U

40 A B C D E F G H I J K L M N O P Q R S T U

41 A B C D E F G H I J K L M N O P Q R S T U

42 A B C D E F G H I J K L M N O P Q R S T U

43 A B C D E F G H I J K L M N O P Q R S T U

44 A B C D E F G H I J K L M N O P Q R S T U

45 A B C D E F G H I J K L M N O P Q R S T U

46 A B C D E F G H I J K L M N O P Q R S T U

47 A B C D E F G H I J K L M N O P Q R S T U

48 A B C D E F G H I J K L M N O P Q R S T U

49 A B C D E F G H I J K L M N O P Q R S T U

50 A B C D E F G H I J K L M N O P Q R S T U

51 A B C D E F G H I J K L M N O P Q R S T U

52 A B C D E F G H I J K L M N O P Q R S T U

53 A B C D E F G H I J K L M N O P Q R S T U

54 A B C D E F G H I J K L M N O P Q R S T U

55 A B C D E F G H I J K L M N O P Q R S T U

56 A B C D E F G H I J K L M N O P Q R S T U

57 A B C D E F G H I J K L M N O P Q R S T U

58 A B C D E F G H I J K L M N O P Q R S T U

59 A B C D E F G H I J K L M N O P Q R S T U

60 A B C D E F G H I J K L M N O P Q R S T U

61 A B C D E F G H I J K L M N O P Q R S T U

62 A B C D E F G H I J K L M N O P Q R S T U

63 A B C D E F G H I J K L M N O P Q R S T U

64 A B C D E F G H I J K L M N O P Q R S T U

65 A B C D E F G H I J K L M N O P Q R S T U

66 A B C D E F G H I J K L M N O P Q R S T U

67 A B C D E F G H I J K L M N O P Q R S T U

68 A B C D E F G H I J K L M N O P Q R S T U

69 A B C D E F G H I J K L M N O P Q R S T U

70 A B C D E F G H I J K L M N O P Q R S T U

71 A B C D E F G H I J K L M N O P Q R S T U

72 A B C D E F G H I J K L M N O P Q R S T U

73 A B C D E F G H I J K L M N O P Q R S T U

74 A B C D E F G H I J K L M N O P Q R S T U

75 A B C D E F G H I J K L M N O P Q R S T U

76 A B C D E F G H I J K L M N O P Q R S T U

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****Federal Acquisition Regulation (FAR);
Information Collection Under OMB
Review**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Affidavit of Individual Surety.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION:**a. Purpose**

The FAR currently permits an offeror to furnish individual sureties in support of a contract requirement for a bid guarantee, performance, or payment bond. Bonds are required to protect the Government and suppliers under Government contracts. The current regulations do not adequately protect either party. A contract clause is established requiring offerors to obtain from each person acting as an individual surety on a bid, performance on payment bond, a pledge of assets and a SF 28. If this information were not collected, the Government would be unprotected. This is currently the case since presently no assets are pledged to the Government. As a result, the following problems repeatedly have developed:

(a) The value of assets claimed on the SF 28 are virtually unsubstantiated.

(b) No controls exist to ensure that the same assets are not repeatedly pledged unbeknown to the respective contracting officer.

(c) The value of assets may be vastly overstated, while the value of liabilities may not be fully disclosed.

(c) The assets may be disposed of without Government knowledge.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 8; total annual responses, 4,000; hours per response, .30; and total response burden hours, 2,000.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0001, Affidavit of Individual Surety.

Dated: November 16, 1988.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 88-27460 Filed 11-28-88; 8:45 am]

BILLING CODE 6820-61-M

**Federal Acquisition Regulation (FAR);
Information Collection Under OMB
Review**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection concerning Bid, performance, and payment bonds.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION:**a. Purpose**

The Miller Act (40 U.S.C. 270a through 270e) requires performance and payment bonds for any construction contract exceeding \$25,000; unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate. When it is appropriate and performance and

payment bonds are required, the Government may require a bid guarantee.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 19,075; responses per respondent, 4.87; total annual responses, 92,895; hours per response, .42; and total response burden hours, 39,016.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0045, Bid, Performance, and Payment Bonds.

Dated: November 16, 1988.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 88-27461 Filed 11-28-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION**Proposed Information Collection
Requests**

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before December 29, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) Recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 23, 1988.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Vocational and Adult Education

Type of Review: New.

Title: Financial Status and

Performance Report for the Adult Education for the Homeless Program.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 52.

Burden Hours: 468.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: State educational agencies that have participated in the Adult Education for the Homeless Program are to submit these reports to the Department. The Department uses the information to monitor expenditure of funds and to provide reports to Congress.

Office of Educational Research and Improvement

Type of Review: New.

Title: Survey on the Use of Research and Development Resources—Fast Response Survey System.

Affected Public: State or local governments.

Frequency: One time only.

Reporting Burden:

Responses: 1,000.

Burden Hours: 500.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This survey will obtain information from school districts concerning their use of research and development resources funded by the Department. The survey will provide information that will assist the Department's decisionmaking about the structure and types of services to be offered through the regional educational laboratory program in the future.

Type of Review: Revision.

Title: Teacher Followup Survey (of the Schools and Staffing).

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 6192.

Burden Hours: 2550.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The Teacher Followup Survey is the fifth portion of the Schools and Staffing Survey, to be conducted one year after the base year data collection. The Department uses the information to followup on the teachers who left their teaching professions and a subsample of those who remained in their teaching professions.

Office of Postsecondary Education

Type of Review: New.

Title: Institutional Quality Control Pilot Project—Annual Evaluation.

Frequency: One-time.

Affected Public: Non-profit institutions; Small businesses or organizations.

Reporting Burden:

Responses: 42.

Burden Hours: 126.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Aid administrators that have participated in the Institutional Quality Control Pilot Project are to submit the report to the Department. The department uses the information to assess the accomplishments of goals and objectives for this pilot project.

Office of Special Education and Rehabilitation Services

Type of Review: Extension.

Title: Annual Report on State Agency Independent Living Rehabilitation Services.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 79.

Burden Hours: 632.

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: This information will be used to analyze and evaluate the Independent Living Rehabilitation (ILR) services provided by State ILR agencies funded under Title VII, Part A of the Rehabilitation Act, as amended.

Type of Review: Reinstatement.

Title: Annual Vocational Rehabilitation Program/Cost Report.
Affected Public: State or local governments.

Frequency: Annually.

Reporting Burden:

Responses: 84.

Burden Hours: 420.

Recordkeeping:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: State Vocational Rehabilitation agencies submit this report to the Department. The Department uses the information to analyze expenditures, to evaluate program accomplishments, and to examine data for indicators of problem areas.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Certification: Indian Student Enrollment.

Frequency: Annually.

Affected Public: Individuals or Households; State or Local Governments.

Reporting Burden:

Responses: 25,000.

Burden Hours: 6,250.

Recordkeeping:

Recordkeepers: 1,115.

Burden Hours: 558.

Abstract: A completed student certification form for each Indian Student must be on file in the office of the applicant in order to qualify for a formula grant under the Indian Education Act, as amended. The Department uses the information to make grant awards.

[FR Doc. 88-27511 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of a subgroup of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 16, 1988.

ADDRESS: U.S. Department of Education, Office of Educational Research and Improvement, Room 600B, 555 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100-297); 20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

A subgroup of the National Assessment Governing Board will meet in Washington, DC on December 16, 1988 from 9:00 a.m. to 4:00 p.m. The proposed agenda includes consideration of the Board's organizational and staffing requirements.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600,

Washington, DC from 8:30 a.m. to 5:00 p.m.

Dated: November 23, 1988.

Patricia Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88-27426 Filed 11-28-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA89-1-53-001]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

November 23, 1988.

Take notice that K N Energy, Inc. ("K N") on November 17, 1988, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers for purchased gas costs. Compared with rates stated in K N's annual PGA filing (TA89-1-53-000) made September 30, 1988, the proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive for IOR-1 and IOR-2, by 6.07¢ per Mcf which represents an increase in the Current Adjustment. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 6.67¢ per Mcf and 6.70¢ per Mcf, respectively. K N states that the filing reflects revision to its previously filed annual PGA to reflect correction of two errors made in that filing. The proposed effective date for the rate changes is December 1, 1988.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before December 14, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-27430 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-23-000]

Northern Natural Gas Co., Division of Enron Corp.; Filing

November 22, 1988.

Take Notice that on November 15, 1988, Northern Natural Gas Company Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1,

Second Revised Sheet No. 52c
Second Revised Sheet No. 52c.2a
Third Revised Sheet No. 52c.3
First Revised Sheet No. 52c.4
Third Revised Sheet No. 52c.5
Second Revised Sheet No. 52c.6
First Revised Sheet No. 52c.8
Second Revised Sheet No. 52c.9
First Revised Sheet No. 52f
Second Revised Sheet No. 52f.3
Third Revised Sheet No. 52f.4
Second Revised Sheet No. 52f.5
Second Revised Sheet No. 52f.7
First Revised Sheet No. 52f.10
Second Revised Sheet No. 52f.12
First Revised Sheet No. 52f.15

Northern proposes tariff revisions to its Transportation Rate Schedules FT-1 and IT-1 in response to the Commission's mandate under Order No. 497 that pipelines strictly enforce tariff provisions that contain no discretionary language. Operational situations occur from time to time which may have an undeterminable effect on the pipeline and may prevent the pipeline from strictly enforcing its tariff provisions. Because such situations are innumerable, tariff provisions to address them cannot be prepared in advance. Northern states that a pipeline must have sufficiently flexible tariff provisions to allow it to react reasonably to problematic situations in a not unduly discriminatory manner. The revisions proposed by Northern provide such flexibility. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice &

Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27428 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-35-000 and TA89-1-35-001]

West Texas Gas, Inc.; Filing

November 23, 1988.

Take notice that on November 14, 1988, West Texas Gas, Inc. (WTG) filed Twelfth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1988. On November 17, 1988, WTG filed a Substitute Twelfth Revised Sheet No. 3a to correct an error in the November 14 filing. Substitute Twelfth Sheet No. 3a and the accompanying explanatory tariff sheets were filed by WTG in accordance with the transmittal rules under the Commission's recently revised purchased gas adjustments regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before December 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-27429 Filed 11-28-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 18, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-76513. Persons wishing to comment on this information collection should contract Elyette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0050.

Title: Application for Ship Radio Inspection or Survey.

Form Number: FCC Form 801.

Action: Reinstatement of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: Annually.

Estimated Annual Burden: 3,800 Responses; 319 Hours.

Needs and Uses: The FCC Form 801 is submitted by licensees to request an inspection of their shipboard radio service and to provide the inspecting office with the necessary data to perform the inspection. This assists FCC field personnel to determine if radio stations on-board ships meet the required specifications to guarantee public safety, so that a safety certificate may be issued.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-27408 Filed 11-28-88; 8:45 am]

BILLING CODE 6712-01-M

Closed Circuit Test, Emergency Broadcast System; Week of December 12, 1988

November 21, 1988.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of December 12, 1988. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test

Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-27407 Filed 11-28-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of adoption of revision to system of records: "Employee Financial Disclosure Statements."

SUMMARY: The FDIC is adopting in final form a revision to its system of records entitled "Employee Financial Disclosure Statements". The revision will serve to conform the system to the changes being made to Part 336 of the FDIC's regulations regarding Employee Responsibility and Conduct and to clarify and update the system.

EFFECTIVE DATE: November 29, 1988.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, at (202) 898-7272, or Donald L. Rosholt, Deputy Ethics Counselor, at (202) 898-7271.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the FDIC published in the Federal Register a Notice of proposed changes to its system of records entitled "Employee Financial Disclosure Statements" (53 FR 26309). The public was provided an opportunity to comment during a 60-day period. No comments were received, however.

In summary, the changes will accomplish the following: (1) The addition of the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation to the system; (2) the addition of the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for

Retention—Notice of Disqualification; (3) the deletion of Financial Disclosure Reports submitted pursuant to title II of the Ethics in Government Act of 1978 from the FDIC system because they are already included in Office of Personnel Management government-wide system OPM/Govt-4; (4) a change in system location from one location in Washington, DC, to designated divisional, regional, and consolidated offices of the FDIC; and (5) general clarification and update of the system.

The revision is being finalized concurrently with the adoption of amendments to Part 336 of the FDIC's regulations (12 CFR Part 336) entitled "Employee Responsibilities and Conduct" in order to conform the system to the regulation.

In view of the fact that no comments were received, the Board of Directors hereby revises the Employee Financial Disclosure Statements system to read as follows:

FDIC 30-64-0006

SYSTEM NAME:

Employee Financial Disclosure Statement System.

SYSTEM LOCATION:

Confidential Statements of Employment and Financial Interests, Reports of Interest in Bank Securities and Interest in FDIC Decision, Confidential Reports of Employment Upon Resignation, Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation, Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification, and related records are located in designated divisional, regional, or consolidated offices to which individuals covered by the system are assigned. Duplicate copies of the above records are maintained in the Office of the Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, for the purpose of certification of review and resolution of conflicts of interest disclosed therein. Confidential Reports of Indebtedness and related records are located in the Office of the Executive Secretary. A list of the FDIC's divisional and regional offices is available from the Office of Corporate Communications, FDIC, 550-17th Street, NW., Washington, DC 20429, (202) 898-6996. A list of the FDIC's consolidated offices is available from the Operations Branch, Division of Liquidation, FDIC, 550-17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and Former FDIC officers, employees, and special government employees required to file any of the following forms: (1) Confidential Statement of Employment and Financial Interests; (2) Confidential Report of Indebtedness; (3) Report of Interest in Bank Securities and Interest in FDIC Decision; (4) Confidential Report of Employment Upon Resignation; (5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation; (6) Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes data directly furnished by the individual on the following six forms or related records that may be generated in the course of the FDIC's administration of Executive Orders 11222 and 12565 and/or 12 CFR Part 336:

- (1) Confidential Statement of Employment and Financial Interests—Contains statements of personal and family holdings, interests in business enterprises and real property, creditors, and outside employment.
- (2) Confidential Report of Indebtedness—Contains information on extensions of credit (loans and credit cards) by FDIC-insured banks and affiliates of FDIC-insured banks and non-insured banks; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured banks or affiliates thereof.
- (3) Report of Interest in Bank Securities and Interest in FDIC Decision—Contains information on whether or not an employee owns or controls, directly or indirectly, any securities of insured banks or affiliates thereof, and if so, lists specific securities, the nature and extent of such interests and the manner of acquisition, contains information on other outside interests which may have an impact on an employee's official duties, and may contain memoranda and correspondence relating to requests for approval or retention of bank securities by employees.
- (4) Confidential Report of Employment Upon Resignation—Contains information as to the employee's prospective employer, the nature of the business or organizational activities of the prospective employer, the position the employee will occupy, dates of negotiation for such employment, and

the employee's official involvement in any, with the prospective employer.

(5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation—Contains employee's certification and acknowledgement that he or she has received a copy of the standards of conduct, has viewed the FDIC Orientation Ethics Video, and has a positive responsibility to comply with the standards of conduct.

(6) Statement of Credit Card Obligations in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification—Contains a Division of Bank Supervision employee's disclosure of credit extended through the use of a credit card by a bank headquartered outside of the employee's region of assignment and acknowledgement of disqualification from participating in any matter affecting the creditor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of E.O. 11222, 3 CFR 306 (1964-1965), as amended by E.O. 12565, 3 CFR 229 (1987); section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed, where the Director of the U.S. Office of Government Ethics or the Chairman of the FDIC's Board of Directors determines that good cause has been shown for such use:

(1) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order when the information indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by regulation, rule, or order issued pursuant thereto.

(2) To a congressional office in response to an inquiry made at the request of the individual.

(3) To any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, or in connection with the criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file orders.

RETRIEVABILITY:

Indexed by name, and, in the Office of the Executive Secretary, on an automated system also indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in lockable offices and, in the Office of the Executive Secretary, on a password-protected automated index system.

RETENTION AND DISPOSAL:

Retained for six years and then destroyed by shredding except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Counselor, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The request must contain the name and office of the individual covered by the system.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained or a person designated by him or her and from the FDIC's Ethics Counselor and support personnel. Information may also be obtained from the other parties to whom the FDIC has supplied information in connection with evaluating the records maintained in the Employee Financial Disclosure Statements system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-27422 Filed 11-28-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[Notice No. 8]

Federal Savings and Loan Advisory Council Meeting

November 22, 1988.

AGENCY: Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

DATE(S): December 7, 1988, 8:30 a.m.-4:00 p.m.; December 8, 1988, 9:00 a.m.-11:30 a.m.

ADDRESS: Hotel Washington, 15th and Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

John M. Buckley, Jr. (202) 377-6577, Debra J. Ahearn (202) 377-6924.

SUPPLEMENTARY INFORMATION:

Proposed Agenda

1. Thrift Industry concerns.
2. Major Legal Issues.
3. Emerging Issues for the Thrift Industry.
4. Investment Banking and Thrift Institutions.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88-27489 Filed 11-28-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American Transport Lines, Inc., et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010382-014

Title: Argentina/U.S. Gulf Ports Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.

CIA. De Navegacao Lloyd Brasileiro Companhia Maritime Nacional Empresa Lineas Maritimas Argentinas S.A.

Reefer Express Lines PTY., Ltd. Transportacion Maritime Mexicana S.A.

American Transport Lines, Inc.

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, and modify certain other pool accounting provisions.

Agreement No.: 212-010386-013

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.

CIA. De Navegacao Lloyd Brasileiro Empresa Lineas Maritimas Argentinas S.A.

American Transport Lines, Inc.

Reefer Express Lines PTY., Ltd. Van Nievelt, Goudriaan and Co. A/S Ivarans Rederi

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, provide for principals' meetings on 90 days notice, and modify certain other pool accounting provisions.

Agreement No.: 212-010388-010

Title: U.S. Atlantic Coast/Argentina Agreement.

Parties:

A Bottacchi S.A. De Navegacion C.F.I.I.

Empresa Lineas Maritimas Argentinas S.A.

American Transport Lines, Inc.

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, and modify certain other pool accounting provisions.

Agreement No.: 212-010389-010

Title: U.S. Gulf Ports/Argentina Agreement.

Parties:

A Bottacchi S.A. De Navegacion

C.F.I.I.

Empresa Lineas Maritimas Argentinas S.A.

American Transport Lines, Inc.

Synopsis: The proposed modification would authorize space chartering among member lines, extend provisions governing the accounting for U.S. Gulf cargoes under alternate coast service to May 31, 1989, provide for principals' meetings on 90 days notice, and modify certain other pool accounting provisions.

Agreement No.: 203-011220

Title: Bermuda Discussion Agreement.

Parties:

Bermuda Container Line Ltd.

Lloyd (Bermuda) Line Ltd.

Synopsis: The proposed agreement would authorize the parties to meet, exchange information, discuss, and agree upon rates, charges, service contracts, and conditions of service in the trade between United States ports, and interior and coastal points in North American via such ports; and ports and points in Bermuda. Adherence to any agreements reached by the parties would be voluntary.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 23, 1988.

[FR Doc. 88-27404 Filed 11-28-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; American Transport Lines, Inc., et al

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC

20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-025

Title: Steamship Operators Intermodal Committee Agreement.

Parties:

Yang Ming Line Marine Transport Corp.,

Zim Israel Navigation Co. Ltd.,

American President Lines, Ltd.,

Mitsui O.S.K. Lines, Ltd.,

Showa Line, Ltd.,

Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed modification would delete Yamashita-Shinnihon Steamship Co., Ltd. as a party to the Agreement.

Agreement No.: 212-009848-021

Title: U.S. Gulf Ports/Brazil

Agreement.**Parties:**

Companhia De Navegacao Lloyd Brasileiro,

Companhia Maritima Nacional American Transport Lines, Inc.

Synopsis: The proposed modification would extend the provisions governing the accounting for cargoes under alternate coast service to December 31, 1989.

Agreement No.: 217-011221

Title: Wilhelmsen/ACL/GCL Space Charter Agreement.

Parties:

Atlantic Container Line BV ("ACL"),

Gulf Container Line (GCL), BV

("GCL"),

Wilhelmsen Lines A/S

("Wilhelmsen").

Synopsis: The proposed Agreement would authorize ACL and GCL to

charter space of Wilhelmsen vessels and coordinate sailings in the trade between and via North American Atlantic ports and European ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 23, 1988.

[FR Doc. 88-27424 Filed 11-28-88; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Ryan Walsh, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200180

Title: Jackson County Port Authority Terminal Agreement.

Parties:

Jackson County Port Authority, Board of Supervisors of Jackson County, Mississippi, and Ryan Walsh, Inc.

Synopsis: The agreement provides for the lease of marine terminal facilities and property at the Port of Pascagoula

to be used for the receiving, handling, processing, storage, warehousing and delivery of waterborne general cargo.

By Order of the Federal Maritime Commission.

Dated: November 23, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-27495 Filed 11-28-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

FISCORP, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 16, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **FISCORP, Inc.**, dba First Institutional Service Corporation, Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, November 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27403 Filed 11-28-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Thomas D. Ross, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Thomas D. Ross**, Ron Bowden, Randy Lanning, Randy Lamprecht and Mark Buckley; to each acquire 14.29 percent of the voting shares of Robuck, Inc., South Sioux City, Nebraska, and thereby indirectly acquire the State Savings Bank, Onawa, Iowa.

2. **E. V. Silveri**, to acquire 0.4 percent of the voting shares of First Midwest Corporation of Delaware, Elmwood Park, Illinois, and thereby indirectly acquire Illinois State Bank of Chicago, Chicago, Illinois; Midwest Bank and Trust Company, Elmwood Park, Illinois; and State Bank of Union, Union, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Donald A. Gloan**, Richardson, Texas; to acquire 28.12 percent of the voting shares of Rawlins Bancshares, Inc., Atwood, Kansas, and thereby indirectly acquire Farmers Bank and Trust, Atwood, Kansas.

2. **Melvin Winger**, Johnson, Kansas, and John Lewis, Syracuse, Kansas; to each acquire an additional 7.39 percent of the voting shares of Syracuse Financial Company, Syracuse, Kansas, and thereby indirectly acquire First National Bank of Syracuse, Syracuse, Kansas.

Board of Governors of the Federal Reserve System, November 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-27402 Filed 11-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: December 7, 1988, 2:00 p.m. to 5:00 p.m.

ADDRESS: For location of meeting call (202) 272-3421.

FOR FURTHER INFORMATION CONTACT:

Ash Hayes, Ed.D., Executive Director, President's Council on Physical Fitness and Sports, 450 Fifth Street, NW., Suite 7103, Washington, DC 20001, Telephone: (202) 272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The Functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the Council members of the national program of physical fitness and sports, to report on on-going Council programs, and to plan for future directions.

Date: November 23, 1988.

Ash Hayes,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 88-27488 Filed 11-28-88; 8:45 am]

BILLING CODE 4160-17-M

National Institutes of Health

Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee on December 5-6, 1988, at the National Institutes of Health, Bethesda, MD. The meeting will take place from 8:30 a.m. to 5:00 p.m. on December 5, and from 9:00 a.m. to 12:15 p.m. on December 6, in Building 31, C Wing, Conference Room 10. The meeting will be open to the public.

The purpose of the meeting is to discuss the development and evaluation of therapeutics for AIDS.

Anthony S. Fauci, Associate Director for AIDS Research, National Institutes of Health, Shannon Building, Room 201, Bethesda, MD 20892, (301) 496-0357, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: November 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-27481 Filed 11-28-88; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the Program Advisory Committee on the Human Genome

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Program Advisory Committee on the Human Genome on January 3 and 4, 1989, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place from 8:30 a.m. to 5:30 p.m. on January 3 and 4, in Building 31, Conference Room 6, C Wing. The meeting will be open to the public.

This will be the initial meeting of the Program Advisory Committee on the Human Genome. The purpose of the meeting is to discuss the planning, organization, and progress of the human genome project at the National Institutes of Health.

Dr. Elke Jordan, Director of the Office of Human Genome Research, National Institutes of Health, Shannon Building, Room 332, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: November 22, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-27482 Filed 11-28-88; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX, Social Services Block Grant Act; Promulgation for Fiscal Year 1990

AGENCY: Office of Human Development Service, HHS.

ACTION: Notification of allocation of Title XX—Social Services Block Grant Allotment for fiscal year 1990.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal year 1990, pursuant to Title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes \$2.7 billion for Fiscal Year 1990 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to \$2.7 billion as its allocation for Fiscal Year 1981 bore to \$2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the \$2.7 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1990, the allotments are based upon the Bureau of Census population statistics contained in its publications "Current Population Reports" (Series P-25, No. 1017 issued October 1988) and "Estimates of the Population of Puerto Rico and the

Outlying Areas: 1980 to 1987" (Series P-25, No. 1030 issued August 1988), which is the most recent satisfactory data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1989.

Fiscal Year 1990 Federal Allotments to States for Social Services—Title XX Block Grants

Total.....	\$2,700,000,000
Alabama.....	45,041,206
Alaska.....	6,057,982
American Samoa.....	176,117
Arizona.....	38,731,719
Arkansas.....	26,243,966
California.....	308,988,787
Colorado.....	36,632,202
Connecticut.....	35,374,679
Delaware.....	7,096,806
District of Columbia.....	6,746,886
Florida.....	133,942,640
Georgia.....	69,808,949
Guam.....	465,517
Hawaii.....	12,039,419
Idaho.....	11,033,401
Illinois.....	126,670,874
Indiana.....	60,481,406
Iowa.....	30,650,765
Kansas.....	27,085,960
Kentucky.....	40,874,976
Louisiana.....	49,283,980
Maine.....	13,045,438
Maryland.....	50,289,999
Massachusetts.....	63,958,731
Michigan.....	100,940,853
Minnesota.....	46,703,324
Mississippi.....	29,097,997
Missouri.....	56,118,347
Montana.....	8,868,273
Nebraska.....	17,419,432
Nevada.....	11,164,620
New Hampshire.....	11,897,264
New Jersey.....	84,811,749
New Mexico.....	17,025,773
New York.....	194,150,671
North Carolina.....	71,208,627
North Dakota.....	7,315,505
North Mariana Island.....	93,103
Ohio.....	117,868,211
Oklahoma.....	35,954,233
Oregon.....	29,885,316
Pennsylvania.....	129,688,930
Puerto Rico.....	13,965,517
Rhode Island.....	10,814,701
South Carolina.....	37,878,790
South Dakota.....	7,731,035
Tennessee.....	53,483,015
Texas.....	187,994,274
Utah.....	18,830,045
Vermont.....	6,036,112
Virgin Islands.....	465,517
Virginia.....	65,358,409
Washington.....	49,907,275
West Virginia.....	20,623,383

Wisconsin..... 52,455,126
Wyoming..... 5,522,168

Date: November 22, 1988.

G. Barry Nielsen,

Director, Office of Policy, Planning, and Legislation.

Approve: November 23, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-27496 Filed 11-28-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-340-08-4333-02]

Information Collection Proposal Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Officer of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: Recreation Visitor Survey, 43 CFR 1601.5-3.

OMB Approval Number: 1004-0147.

Abstract: Respondents supply information on their use of recreation opportunities on public lands. This information is used during subsequent land use planning process to help the Bureau make decisions concerning future management of the surveyed area.

Bureau Form Number: 8310-8.

Frequency: Collected on a one-time basis to solve specific planning and management problems.

Description of Respondents: Recreation visitors to public lands.
Estimated Completion Time: 12 Minutes.

Annual Responses: 1800.

Annual Burden Hours: 360.

Bureau Clearance Officer: Rick Iovaine (202) 653-8853.

Date: September 9, 1988.

Dean Stepanek,

Assistant Director, Land and Renewable Resources.

[FR Doc. 88-2713 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-84-M

Availability of the Arkansas River Recreation Management Plan and Environmental Analysis/Plan Amendment; Royal Gorge Resource Area, Canon City District, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: The Arkansas River Recreation Management Plan and Environmental Analysis/Plan Amendment to the Royal Gorge Management Framework Plan for the Royal Gorge Resource Area, Canon City District, Colorado.

SUMMARY: In accordance with 43 CFR Part 1600, the Bureau of Land Management (BLM) Canon City District, Colorado has completed an amendment to the Royal Gorge Resource Area Management Framework Plan. This amendment addresses river related recreation management along the Arkansas River between Leadville and Pueblo, Colorado. The Preferred Alternative is derived from the Proposed Action and alternatives that went through a 45-day public comment period which ended September 30, 1988. This amendment reflects through consideration of public comments. A 30-day protest period is provided.

DATE: The protest period ends January 3, 1989.

ADDRESS: Protests should be sent to the Director (760), Bureau of Land Management, Room 909, Premier Building, 1725 I Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, Colorado 81212, (719) 275-0631.

SUPPLEMENTARY INFORMATION: A copy of the plan may be reviewed or obtained in person or by mail from the Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, Canon City, Colorado 81212 or the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, (303) 236-1721.

Persons who have participated in this planning process and have interests that may be adversely affected may protest approval of the plan in accordance with the planning regulations, 43 CFR1610.5-

2. Protests should be made in writing to the BLM Director (760) in Washington. The protest should include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested.
4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.
5. A concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day protest period (January 3, 1989) and after the Governor's consistency review, the Final Plan, excluding and portions under protest, shall be implemented.

Date: November 21, 1988.

Neil F. Morck,
State Director.

[FR Doc. 88-27462 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-020-8-4212-13; A-23306]

Realty Action; Exchange of Public Lands, Maricopa County, AZ

The following described Federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

- T. 5 S., R. 1 E.,
Sec. 2, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$.
T. 7 S., R. 1 E.,
Sec. 2, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Sec. 3, lots 1-3, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$.
Comprising 1,680.86 acres, more or less.

In exchange for the above-described public lands, the United States will acquire all or part of the below described private lands from Pleasant Partners of Arizona, an Arizona General Partnership:

Gila and Salt River Meridian, Arizona

- T. 8 N., R. 2 W.,
Sec. 19, lots 1 and 2, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 20, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 21, all.
T. 8 N., R. 3 W.,
Sec. 9, MS 1477;
Sec. 15, MS 1477;
Sec. 16, MS 1477.

Comprising 1,644.90 acres of land owned by Pleasant Partners of Arizona.

The exchange proposal involves all of the exchange proponent's interest in the private lands and the surface and mineral estate in the sections of public lands where the United States holds both estates. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
 2. Right-of-way PHX-083253 to El Paso Natural Gas Company for transportation of natural gas.
 3. Right-of-way PHX-086067 to El Paso Natural Gas Company for transportation of natural gas.
 4. Right-of-way A-1177 to El Paso Natural Gas Company for transportation of natural gas.
 5. Right-of-way A-11243 to El Paso Natural Gas Company for a Cathodic Protection Station and anode bed.
 6. Right-of-way A-21968 to All-American Pipeline Company for transportation of crude oil.
 7. Right-of-way PHX-086803 to Arizona Department of Transportation for state highway purposes.
 8. Right-of-way AR-016861 to Arizona Department of Transportation for state highway purposes.
 9. Right-of-way A-9698 to Arizona Department of Transportation for state highway purposes.
 10. Right-of-way A-14642 to Arizona Public Service Company for electric transmission line purposes.
 11. Right-of-way A-15888 to U.S. West Communication Right-of-Way Department for telephone line purposes.
- The lands to be acquired by the United States from Pleasant Partners shall be subject to certain encumbrances as detailed in Schedule B of the Title Insurance Policy.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, and from any subsequent land exchange proposals.

The segregation of the described selected lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years, whichever occurs first.

Upon completion of the official appraisal, acreage adjustments will be

made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: November 22, 1988.

Henri R. Bisson,
District Manager.

[FR Doc. 88-27432 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

[DES 88-54]

Alaska Region; Availability of the Draft Environmental Impact Statement and Location and Date of Public Hearing on the Proposed Mining Program Lease Sale in Norton Sound

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1989 Outer Continental Shelf Mining Program Lease Sale in Norton Sound. The proposed sale will offer for lease approximately 178,282 acres.

Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Alaska Historical Library, Juneau, Alaska; Alaska Pacific University Library, 1531 Crescent Avenue, Anchorage, Alaska; Alaska State Library, Juneau, Alaska; Hooper Bay Public Library, Hooper Bay, Alaska; Gambell Community Library and Learning Center, Gambell, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Golovin Community Library, Golovin, Alaska; Kegoyah Kozga Public Library, Nome, Alaska; Kingikme Public Library, Wales, Alaska; Koyuk City Library, Koyuk, Alaska; Kuskokwim Consortium Library, Bethel, Alaska; McQueen School Library,

Kivalina, Alaska; North Slope Borough School Library, Barrow, Alaska; Northern Alaska Environmental Center Library, 218 Driveway Street, Fairbanks, Alaska; Palmer Public Library, 655 S. Valley Way, Palmer, Alaska; Savoonga Public Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Tikigaq Library, Point Hope, Alaska; University of Alaska, Elmer E. Rasmuson Library, Fairbanks, Alaska; University of Alaska, Government Documents Library, 3211 Providence Drive, Anchorage, Alaska; Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska;

In accordance with 30 CFR 256.26, the Minerals Management Service will hold a public hearing in order to receive comments and suggestions relating to the EIS. The hearing will be held on January 5, 1989, at 7:00 p.m., at the Mini Convention Center, Nome, Alaska.

The hearing will provide the Secretary of the Interior with information from Government Agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearing are asked to contact the Regional Director at the above address or by telephone with Ray Emerson, (907) 261-4652, or Tim Holder, (907) 261-4597, by Tuesday, January 3, 1989.

Time limitation may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until January 17, 1989. This will allow those unable to testify at the public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until January 17, 1989, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302.

Date: November 23, 1988.

Carolita Kallaur,

Associate Director for Offshore Minerals Management.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-27397 Filed 11-28-88; 8:45 am]

BILLING CODE 4320-MR-M

National Park Service

Wild and Scenic River Study; Massachusetts and Connecticut Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 sser. 10), that the second meeting of the Farmington River Study Committee will be held Thursday, December 15, 1988. The meeting follows a field trip held on Saturday, December 3.

The Committee was established pursuant to Pub. L. 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the Wild and Scenic River Study of two segments of the Farmington River.

The meeting will convene at 7:30 p.m. in the auditorium of the Barkhamsted School, Route 181, Pleasant Valley, Connecticut, for the following reasons:

1. Approval of Minutes of First Meeting on 11/14/88;
2. Confirmation of ByLaws;
3. Election of Committee Leadership;
4. Establishment of Subcommittees;
5. Review of Wild Cat Brook Study;
6. Opportunity for Public Comment;
7. Other Business;

It is anticipated that about one hundred people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

John Guthrie,

Acting Regional Director.

Date: November 21, 1988.

[FR Doc. 88-27475 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations; Connecticut et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 19, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded

to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 14, 1988.

Beth L. Savage,

Acting Chief of Registration, National Register.

CONNECTICUT

New Haven County

Stony Creek—Thimble Islands Historic District, Roughly Thimble Islands Rd. between Rt. 146 and Long Island Sound and the Thimble Islands, Branford, 88002844.

KANSAS

Jefferson County

Buck Creek School, Off US 24, 2 mi. E of Williamstown, Perry vicinity, 88002830

Johnson County

Parker, Martin Van Buren, House, 631 W. Park, Olathe, 88002829

KENTUCKY

Shelby County

Allen, J.B., House (Shelby County MRA), KY 53, .5 mi. N of Chestnut Grove, Chestnut Grove vicinity, 88002867

Ballard, William H., House (Shelby County MRA), KY 53, .5 mi. E of McMakin Rd., Shelbyville vicinity, 88002936

Bank of Simpsonville (Shelby County MRA), Third and Railroad Sts., Simpsonville, 88002878

Basket Farm (Shelby County MRA), KY 395, 1 mi. S of KY 1779, Clay Village vicinity, 88002848

Bethel Church (Shelby County MRA), US 60, 1 mi. W of Clay Village, Clay Village vicinity, 88002907

Bird Octagonal Mule Barn (Shelby County MRA), KY 43, 3 mi. S of Cropper, Cropper vicinity, 88002858

Bird's Nest (Shelby County MRA), KY 43, 3 mi. S of Cropper, Cropper vicinity, 88002859

Bird, Philomen, House (Shelby County MRA), KY1005/Vigo Rd., E of Beards, Rd., Bagdad vicinity, 88002917

Blades, William, House (Shelby County MRA), KY 1005, .5 mi. W of KY 395, Bagdad vicinity, 88002924

Bland Farm (Shelby County MRA), Vigo Rd., 1 mi. W of Rt. 1005, Bagdad vicinity, 88002882

Blaydes House (Shelby County MRA), Blaydes Ln., 1 mi. N of KY 1779, Bagdad vicinity, 88002852

Booker, Samuel, House (Shelby County MRA), Clore—Jackson Rd., 1.5 mi. W of KY 55, Chestnut Grove vicinity, 88002868

Booker—Giltner House (Shelby County MRA), KY 322, 1.5 mi. S of Henry County line, Chestnut Grove vicinity, 88002870

Brown, Cameron, Farm (Shelby County MRA), KY 55 at Clear Creek, Shelbyville vicinity, 88002914

Brown, John C., House (Shelby County MRA), KY 43, .5 mi. N of KY 12, Mulberry vicinity, 88002856

- Bryan House (Shelby County MRA), US 60, .5 mi. W of Simpsonville, Simpsonville vicinity, 88002880
- Building at Jct. of KY 395 and Benson Pike (Shelby County MRA), KY 395 and Benson Pike, Bagdad vicinity, 88002885
- Burton House (Shelby County MRA), Burks Branch Rd., 1 mi. S of Fox Run Rd., Chestnut Grove vicinity, 88002896
- Burton, David, House (Shelby County MRA), Burks Branch Rd., 3 mi. N of Shelbyville, Shelbyville vicinity, 88002886
- Caldwell House (Shelby County MRA), US 60 at KY 53, Shelbyville vicinity, 88002939
- Calloway House (Shelby County MRA), Clear Creek Rd., 2 mi. S of Henry County line, Eminence vicinity, 88002886
- Carpenter House (Shelby County MRA), KY 148, 1 mi. S of Clark Station, Clark Station vicinity, 88002928
- Carriss's Feed Store (Shelby County MRA), KY 55 and KY 44, Southville, 88002897
- Carriss's Store (Shelby County MRA), KY 714 and KY 53, Southville, 88002898
- Chiles—Bailey House (Shelby County MRA), KY 395, .5 mi. N of Benson Pike, Bagdad vicinity, 88002923
- Clay, Henry School (Shelby County MRA), US 60, Clay Village, 88002944
- Coca-Cola Plant (Shelby County MRA), US 60 at Clear Creek, Shelbyville vicinity, 88002925
- Collins House (Shelby County MRA), KY 362, .5 mi. W of Webb Rd., Todds Point vicinity, 88002876
- Courtney House (Shelby County MRA), S end of Popes Corner Rd., Finchville vicinity, 88002933
- Crockett, John Edward, House (Shelby County MRA), Logan Rd., .5 mi. S of KY 12, Mulberry vicinity, 88002851
- Dale, John, House (Shelby County MRA), Webb Rd., 1.5 mi. N. of US 60, Simpsonville, vicinity, 88002877
- Davis, E. M., Farm (Shelby County MRA), KY 43/Christiansburg Pike, .75 mi. E of KY 55, Shelbyville vicinity, 88002919
- Doctor Nash House (Shelby County MRA), U.S. 60, Clay Village, 88002903
- Duval, Marene, House (Shelby County MRA), Simpsonville—Buck Creek Rd. at Bullskin Creek, Finchville vicinity, 88002905
- Ellis, Samuel, House (Shelby County MRA), KY 53, 2 mi. W. of KY 322, Chestnut Grove vicinity, 88002872
- Figg, Bushrod, House (Shelby County MRA), Zaring Mill Rd., .7 mi. NW of KY 148, Olive Branch vicinity, 88002915
- Fry, Froman, Farm (Shelby County MRA), KY 714, 1.5 mi. E of Southville, Southville vicinity, 88002952
- Fry, L. C., Farm (Shelby County MRA), KY 53, N of Harrington Mill Rd., Shelbyville vicinity, 88002884
- Frye, C. E., Farm (Shelby County MRA), KY 714 and Rockbridge Rd., Southville vicinity, 88002883
- Fullenwider House (Shelby County MRA), Anderson Ln., 1 mi. W of Hebron Rd., Todds Point vicinity, 88002874
- Gibbs, Lester, House (Shelby County MRA), KY 55, .5 mi. N of KY 43, Shelbyville vicinity, 88002889
- Glass, S. D. House (Shelby County MRA), KY 55, .5 mi. N of Fox Run Rd., Shelbyville vicinity, 88002887
- Goodman, J. W., House (Shelby County MRA), KY 55, 1 mi. N of KY 43, Shelbyville vicinity, 88002864
- Graham House (Shelby County MRA), KY 1779, 1.5 mi. W of KY 395, Clay Village vicinity, 88002849
- Gray House (Shelby County MRA), Zaring Mill Rd., .3 mi. S of Locust Grove Rd., Shelbyville vicinity, 88002913
- Grove Hill Cemetery Chapel (Shelby County MRA), S of Shelbyville at Clear Creek, Shelbyville vicinity, 88002922
- Hansbrough, John G. and William, House (Shelby County MRA), Burks Branch Rd., 1.5 r. N of Shelbyville, Shelbyville vicinity, 88002865
- Harbison House (Shelby County MRA), Harrington Mill Pke, 1.5 mi. W of KY 53, Scotts Station vicinity, 88002875
- Harbison House (Shelby County MRA), Zaring Mill Rd., .25 mi. S of I-64, Shelbyville vicinity, 88002931
- Hedden House (Shelby County MRA), KY 637 and Ditto Rd., Harrisonville vicinity, 88002846
- Hornsby Bridge (Shelby County MRA), Clore—Jackson Rd. over Fox Run, .5 mi. W of KY 55, Eminence vicinity, 88002906
- Hornsby, John A., House (Shelby County MRA), Clore—Jackson Rd., .5 mi. W of KY 55, Eminence vicinity, 88002869
- Huss, M. W., House (Shelby County MRA), US 60, .5 mi. E of Clay Village, Clay Village vicinity, 88002946
- Jackson, Eli, House (Shelby County MRA), KY 55 near jct., with Clore—Jackson Rd., Eminence vicinity, 88002891
- Johnston House (Shelby County MRA), KY 714 and KY 1790, Clay Village vicinity, 88002890
- King, M. J., House (Shelby County MRA), Bellview—Clear Creek Rd., .3 mi. W of Bellview Rd., Shelbyville vicinity, 88002916
- Lincoln Institute Complex (Shelby County MRA), US 60 W of Simpsonville, vicinity, 88002926
- Logan House (Shelby County MRA), Brunerstown Rd. at Bullskin Creek, Finchville vicinity, 88002929
- Long, D.T., House (Shelby County MRA), US 60 and Joyes Station Rd., Scotts Station vicinity, 88002902
- Martin House (Shelby County MRA), KY 53, 1 mi. S of Rockbridge Rd., Shelbyville vicinity, 88002937
- McMicken House (Shelby County MRA), KY 53, 2.5 mi. W of KY 322, Chestnut Grove vicinity, 88002871
- Middleton, Henri, House (Shelby County MRA), Old US 60, .75 mi. E. of Peytona, Peytona vicinity, 88002847
- Moesser Farm (Shelby County MRA), Old Mount Eden Rd., .5 S of Grove Hill Cemetery, Shelbyville vicinity, 88002900
- Money Farm (Shelby County MRA), Finchville Rd., .6 mi. S of Brunnerstown Rd., Finchville vicinity, 88002910
- Montgomery House (Shelby County MRA), Buzzard Roost Rd., 1.5 mi. S of US 60, Clay Village vicinity, 88002948
- Morris, Dr. William, Office and House (Shelby County MRA), KY 53, Southville, 88002909
- Moxley Farm (Shelby County MRA), Zaring Mill Rd. S of I-64, Shelbyville vicinity, 88002932
- Muir House (Shelby County MRA), Montana St. at Clear Creek, Shelbyville vicinity, 88002899
- Neal-Hamblen House (Shelby County MRA), Hinkle Ln., 2 mi. W of KY 53, Chestnut Grove vicinity, 88002873
- Newton House (Shelby County MRA), US 60, Clay Village, 88002943
- Olive Branch Methodist Episcopal Church (Shelby County MRA), Zaring Mill Rd. and KY 148, Finchville vicinity, 88002895
- Owen, Brackett, House (Shelby County MRA), Hooper Station Rd., 25 mi. E of KY 53, Shelbyville vicinity, 88002940
- Payen House (Shelby County MRA), KY 44/53, 1.5 mi. N of Mount Eden, Mount Eden vicinity, 88002954
- Pemberton Farm (Shelby County MRA), Finchville—Clark Station Rd., .5 mi. E of KY 148, Clark vicinity, 88002908
- Pickett, James A., House (Shelby County MRA), KY 55, .75 mi. S of KY 148, Finchville vicinity, 88002930
- Pugh House (Shelby County MRA), KY 44, 1 mi. W of KY 53, Southville vicinity, 88002935
- Radcliffe—Duvall Farm (Shelby County MRA), Finchville—Buck Creek Rd., .5 mi., S of Brunnerstown Rd., Finchville vicinity, 88002920
- Ramsey House (Shelby County MRA), KY 148, 1.5 mi. W of KY 44, Southville vicinity, 88002934
- Redmon House (Shelby County MRA), KY 395, 2 mi. N of Bagdan, Bagdad vicinity, 88002853
- Rice House (Shelby County MRA), US 60, .5 mi. N of Clay village, Clay Village vicinity, 88002945
- Robertson House (Shelby County MRA), Buzzard Roost Rd., 1.5 mi. E of Hemp Ridge, Hemp Ridge vicinity, 88002949
- Rockbridge Church (Shelby County MRA), KY 714 and Rockbridge Rd., Hemp Ridge vicinity, 88002951
- Rodgers House (Shelby County MRA), Zaring Mill Rd., 1.5 mi. S of Popes Corner Rd., Shelbyville vicinity, 88002918
- Royalty—Smith Farm (Shelby County MRA), Burks Branch Rd. N of Clear Creek, Shelbyville vicinity, 88002901
- Salem Baptist Church (Shelby County MRA), KY 44/53, .5 mi. S of Southville, Southville vicinity, 88002953
- Shady Rest (Shelby County MRA), US 60, .5 mi. E of Clay Village, Clay Village vicinity, 88002947
- Shropshire Farm (Shelby County MRA), KY 714/Hemp Ridge Rd., 1 mi. S of I-64, Hemp Ridge vicinity, 88002911
- Simpsonville Christian Church (Shelby County MRA), US 60, Simpsonville, 88002881
- Simpsonville Methodist Church (Shelby County MRA), First St., Simpsonville, 88002879
- Sleadd, William, Farm (Shelby County MRA), KY 1790, .5 mi. E of Hooper, Hooper vicinity, 88002941
- Snook House (Shelby County MRA), KY 12 and KY 43, Mulberry vicinity, 88002855
- Snook, Van B., House (Shelby County MRA), Mulberry—Eminence Pike, 1 mi. N of Stoney Point Rd., Cropper vicinity, 88002863

Stapleton Farm (Shelby County MRA), KY
100/Vigo Rd., .5 mi. E of Logan Rd., Bagdad
vicinity, 88002912

Stewart, G. H. House (Shelby County MRA),
KY 55, Shelbyville vicinity, 88002888

Swindler House (Shelby County MRA),
Mulberry—Eminence Pike, .5 mi. N of
Stoney Point Rd., Cropper vicinity,
88002862

Thomas House (Shelby County MRA), KY 43,
.25 mi. E of Mulberry—Eminence Pike,
Mulberry vicinity, 88002857

Thomas, William J., House (Shelby County
MRA), Off KY 12, near jct. with Ky 43,
Mulberry vicinity, 88002860

Tindall House (Shelby County MRA), US 60,
Clay Village, 88002904

Vanatta House (Shelby County MRA), US 60,
Clay Village, 88002942

Venable—Chase House (Shelby County
MRA), KY 43, 2.5 mi. NE of Shelbyville,
Shelbyville vicinity, 88002861

Waddy Historic District (Shelby County
MRA), Roughly KY 395/Main St. S of the
Southern Railroad tracks, Waddy, 88002921

Ware, Charles, House (Shelby County MRA),
Pea Ridge Rd., .5 mi. W of KY 395,
Harrisonville vicinity, 88002845

Ware, Shelby D., House (Shelby County
MRA), KY 714, .5 mi. S of Hemp Ridge,
Hemp Ridge vicinity, 88002950

Weakley, Thomas, House (Shelby County
MRA), KY 1779 and Beard Rd., Clay Village
vicinity, 88002850

Weissinger Mule Barn (Shelby County
MRA), KY 53, .25 mi. S of I-64, Shelbyville
vicinity, 88002938

White House (Shelby County MRA), Cropper
Rd., 75 mi. S of Christianburg,
Christianburg vicinity, 88002854

Wise House (Shelby County MRA), KY 44/
54, .5 mi. N of Mount Eden, Mount Eden
vicinity, 88002955

Wright House (Shelby County MRA), KY
1848, 1.5 mi. S of Simpsonville,
Simpsonville vicinity, 88002927

MINNESOTA

Becker County

Northern Pacific Passenger Depot, Off US 10,
Detroit 88002833

Faribault County

Memorial Library, Sixth St. and Ramsey
Ave., Blue Earth, 88002835

Otter Tail County

River Inn, 133 Mill St., South, Fergus Falls,
88002831

Sibley County

Henderson Commercial Historic District,
Roughly Main St. between Fifth and Sixth
Sts., Henderson, 88002834

NEBRASKA

Douglas County

South Omaha Main Street Historic District,
Roughly S. 24th St. Between M and O Sts.,
Omaha, 88002828

NORTH CAROLINA

Davidson County

Grimes School, Hege Dr., Lexington, 88002832

Guilford County

Guilford County Office and Court Building,
258 S. Main St., High Point, 88002843

SOUTH DAKOTA

Brown County

Augustana Swedish Lutheran Church, 4.5 mi.
S of Claremont, Claremont vicinity,
88002842

Rapid City Historical Museum, 515 West
Blvd., Rapid City, 88002837

Clark County

Garden City Opera House, First and Railroad
Sts., Garden City, 88002839

Clay County

Junker, Jens N. and Anna, Farmstead,
Norway Twnshp, Section 6, Meckling
vicinity, 88002841

Douglas County

Stevens Opera Block, Main St., Delmont,
88002838

Hamlin County

Old St. Mary's Catholic Parish House, 5th
Ave. and Underwood St., Bryant, 88002840

Hughes County

Horner—Hyde House, 100 W. Capitol Ave.,
Pierre, 88002836

WEST VIRGINIA

Summers County

Gwinn, Samuel, Plantation, County Rt. 15,
Lowell vicinity, 88002956

[FR Doc. 88-27290 Filed 11-28-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. Metropolitan Dade County, FL

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(j) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9622(j), notice is hereby given that on September 29, 1988, a proposed Consent Decree in *United States v. Metropolitan Dade County Florida*, was lodged with the United States District Court for the Southern District of Florida. The Complaint in this case sought injunctive relief and cost recovery pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Complaint was filed on September 29, 1988, against Metropolitan Dade County, the past and present owner/operator of the site in question.

The site involved in the case is the Northwest 58th Street Municipal

Landfill, which was operated by Metropolitan Dade County from 1952 to 1982. The proposed Consent Decree provides that metropolitan Dade County will implement a work plan within 60 (sixty) days of the entry of the Consent Decree and reimburse the United States \$80,042.61 in past response costs, out of a total of \$186,121.82 incurred by the Environmental Protection Agency in connection with the NW 58th Street Municipal Landfill site. The work plan to be implemented by Metropolitan Dade County calls for "closure" of the landfill in accordance with the requirements of a Record of Decision ("ROD") signed on September 21, 1987. Under the terms of the ROD, Metropolitan Dade County is required to provide leachate control through a combination of grading, drainage control, and capping. Upon completion of the work plan, Metropolitan Dade County will become responsible for designing and funding Operation and Maintenance activities at the site in a manner consistent with section 121 of CERCLA, 42 U.S.C. 9621. The estimated cost to Metropolitan Dade County of implementing the Consent Decree is approximately \$5 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Metropolitan Dade County, DOJ Ref. No. 90-11-2-358*.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Florida, 155 South Miami Avenue, Suite 600, Miami, Florida 33130 and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, Department of Justice, 9th Street and Pennsylvania Avenue, NW, Washington, DC 20530. In requesting a copy, please enclose a check, in the

amount of \$7.50 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-27507 Filed 11-28-88; 8:45 am]

BILLING CODE 4410-10-M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Public Document Room Established

SUMMARY: Pursuant to its authority under Subtitle A of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987, notice is hereby given that the Monitored Retrievable Storage Review Commission has established a Public Document Room (PDR) where it will make documents collected during its deliberations available for inspection by members of the public. The PDR is located in Suite 318, 1825 K Street, NW., Washington, DC 20006.

DATES: The PDR will be open on Mondays and Thursdays from 8:30 a.m. to 5:30 p.m. Because our facilities are limited, anyone interested in using the PDR is asked to write or call Sauci Churchill to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Sauci S. Churchill, Director, Reference Services, MRS Commission, 1825 K Street, NW., Suite 318, Washington, DC 20006. Telephone (202) 653-5790 on Mondays or Thursdays.

James C. Maloro,
Acting Executive Director.
November 23, 1988.

[FR Doc. 88-27483 Filed 11-28-88; 8:45 am]

BILLING CODE 5820-BE-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-100)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions,

transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATE: Comments are requested by December 29, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0025), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: DoD Property Record (NASA Use).

OMB Number: 2700-0025

Frequency of Report: On occasion.

Type of Respondent: Businesses of other for-profit, non-profit institutions, small businesses or organizations.

Number of Respondents: 1,000.

Annual Responses: 3,000.

Annual Burden Hours: 1,476.

Abstract-Need/Uses: For NASA contractors to use Government-owned equipment they must report the status of that equipment. Rather than creating another form, NASA contractors prepare Section I of DD Form 1342 which is already used by DoD contractors for this purpose.

November 22, 1988.

Philip D. Waller,
Director, General Management Division.

[FR Doc. 88-27417 Filed 11-28-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-99]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the

Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATE: Comments are requested by December 29, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Philip D. Waller, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0021), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: DoD Industrial Plant Equipment Requisition (NASA Use).

OMB Number: 2700-0021.

Type of Request: Extension.

Frequency of Report: On occasion.

Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.

Annual Responses: 400.

Annual Burden Hours: 44.

Abstract-Need/Uses: Before NASA contractors acquire new equipment under NASA contracts, they must check for availability of the equipment within NASA. DoD has an existing Form 1419 for this purpose. Rather than creating a new form, NASA uses a portion of DoD's form which serves NASA's use adequately.

November 22, 1988.

Philip D. Waller,
Director, General Management Division.

[FR Doc. 88-27418 Filed 11-28-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR 5065—Ensuring the Effectiveness of Maintenance Programs for Nuclear Power Plants.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Records of the plant maintenance program should be available at the site for NRC audit and inspection.
5. Who will be required or asked to report: Holders of licenses to operate commercial nuclear power plants.
6. An estimate of the number of responses: Currently, there are about 100 applicants or holders of licenses to operate a nuclear power plant.
7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 1,333 hours annually per plant. The total industry burden will be about 133,333 hours per year.
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: The proposed amendment to 10 CFR Part 50 requires a documented maintenance program to include a set of attributes that are considered to be essential for an effective program. The records for the maintenance program would be subject to NRC audit and inspection to verify that nuclear power equipment is being maintained at a level to ensure that equipment will perform, with a high degree of reliability, its intended function for the protection of public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 17th day of November 1988.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-27486 Filed 11-28-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on December 13, 1988, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 13, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the draft safety reevaluation report (SER) for the Sodium Advanced Fast Reactor (SAFR) design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the

scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 22, 1988

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-27485 Filed 11-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-281]

Virginia Electric and Power Co., Surry Power Station, Unit 2; Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. DPR-37, which authorizes operation of Surry Power Station Unit 2. The operating license provides, among other things, that the Surry Power Station Unit 2 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Surry, Virginia.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Section III.A.6(b) of Appendix J to 10 CFR Part 50 states for following:

If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5(b), notwithstanding the periodic retest schedule of III.D., a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5(b), after which time the retest schedule specified in III.D. may be resumed.

From 1983 through 1986, the licensee conducted three Type A tests at Surry Unit 2. All of these tests were considered to be failures due to leakage penalty additions from Type C (local leakage rate testing of containment isolation valves) testing. In each case the leakage was associated with penetrations/valves in systems that are normally filled with water and operating, under post-accident conditions, and/or the containment sump isolation valves. The licensee indicated that the containment sump isolation valves have been replaced and they are no longer a continuing source of containment leakage, and that the last

three Type A tests have demonstrated that containment integrity has not significantly degraded over the operating cycle. Therefore, the licensee requested a one-time exemption from the scheduler requirements of paragraph III.A.6(b) so that the normal retest schedule can be resumed in accordance with Section III.D.

III

By letter dated August 12, 1988, as supplemented August 15 and August 31, 1988, the licensee requested a one-time exemption from 10 CFR Part 50, Appendix J, section III.A.6(b) so that the normal retest schedule of Appendix J, section III.D. can be resumed. Surry Unit 2 failed the "as found" Type A tests that were conducted in 1983, 1985, and 1986, due to leakage rate additions from Type C testing. In each case the leakage was associated with the normal containment sump isolation valves (TV-DA-100/200 A&B) and/or valves in systems that are normally filled with water and operating under post-accident conditions. If these leakage additions had not been necessary, the plant would not have required an accelerated test schedule delineated in Section III.A.6(b). In order to avoid addition of a leakage penalty and an accelerated test schedule, the licensee elected to demonstrate to the staff's satisfaction that:

The corrective actions taken for the normal containment sump isolation valves for Unit 2 have eliminated the chronic leakage problem, and

2. For the Surry Units 1 and 2, the design of the "water-filled" penetrations is such that it precludes leakage of containment atmosphere through the penetrations during an accident, thus making it unnecessary to add the associated Type C leakage rates to Type A leakage rates.

The licensee stated that accomplishing these two objectives would justify the requested exemption.

The licensee addressed the first issue in its letter dated August 12, 1988. The second issue was addressed in submittals dated February 29, 1988, and August 15, 1988. Section 6.2.2.2 of the Surry Updated Final Safety Analysis Report also contains pertinent information. The staff reviewed these submittals and concluded that the subject "water-filled" containment penetrations are sealed with water to the extent that they need not be vented or drained during Type A tests, and the associated Type C leakage rates need not be added to Type A leakage rate. The staff further concluded that the original leakage path of concern that caused the recent Type A "as found" failures (the normal containment sump

isolation valves) has been corrected since these valves no longer exhibit excessive leakage. The staff's detailed evaluation is provided in a Safety Evaluation dated November 21, 1988.

Therefore, on the basis of the licensee's corrective actions to reduce the "as found" containment leakage, the staff concludes that a return to the normal Type A test schedule of Section III.D. of Appendix J to 10 CFR Part 50 is justified.

By letter dated August 12, 1988, the licensee also submitted information to identify the special circumstances for granting this exemption for Surry Unit 2 pursuant to 10 CFR 50.12. The licensee stated that the purpose of Type A testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. The licensee has replaced the valves which were a continuing source of containment leakage. The licensee also stated that it has met the intent of the regulations in establishing containment integrity, and maintaining that integrity over the operating cycle. Therefore, the licensee believes that this exemption should be granted pursuant to 10 CFR

50.12(a)(2)(ii) and (v), in that application of the regulation in this particular instance is not necessary to achieve the underlying purpose of the rule, which is to measure and ensure that leakage through the primary containment does not exceed the allowable leakage rate at any time during the operating cycle; and, that the exemption would provide only temporary relief from the applicable requirement and the licensee has made a good faith effort to comply with the regulation. This one-time exemption will enable Surry Unit 2 to resume the retest schedule specified in Section III.D. of 10 CFR Part 50, Appendix J and therefore, prevent unnecessary pressurization of the containment to design basis pressure. The staff agrees that the source of leakage which caused the prior failures has been corrected and an additional Type A test at this time is not required to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances,

as set forth in 10 CFR 50.12(a)(2)(ii) are present, justifying the exemption; namely that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule and the exemption is for a one-time relief only. Accordingly, the Commission hereby grants an exemption to section III.A.6(b) of Appendix J to 10 CFR Part 10 to allow the licensee to resume the Type A retest schedule of Section III.D. of Appendix J for Surry Unit 2. This exemption does not apply if the next test is deemed a failure by the NRC acceptance criteria. Such a failure would constitute two consecutive failures and Section III.A.6(b) would again apply.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (53 FR 46724).

A copy of the licensee's request for exemption dated August 12, 1988, as supplemented August 15 and August 31, 1988, and previous information submitted by letter dated February 29, 1988, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of November, 1988.

Steven A. Varga, Director.

Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-27487 Filed 11-28-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of OPM Form 1530 Submitted to OMB for Clearance

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a request to extend an information collection from the public. OPM Form 1530, Report of Medical Examination of Persons Electing Survivor Benefit Under the Civil Service

Retirement System, is completed by employees who wish to provide a survivor benefit for a person who has an insurable interest in the applicant. This form is designed to collect information from both the applicant and the applicant's physician regarding the applicant's health. Annual use by these individuals is estimated at 2,000 forms. The estimated average burden per respondent is one hour and 30 minutes for a total annual burden of 3,000 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632-0199.

DATES: Comments on this proposal should be received by December 13, 1988.

ADDRESSES: Send or deliver comments to—C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.
Constance Horner,
Director.

[FR Doc. 88-27449 Filed 11-28-88; 8:45 am]

BILLING CODE 5325-01-M

Request for Approval of OPM Form 1536 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a request to extend an information collection from the public. OPM Form 1536, Former Spouse's Application for Survivor Annuity under the Civil Service Retirement System, is completed by former spouses of a Federal Government employee who has died. The former spouse will be paid survivor benefits if eligible. Annual use by these individuals is estimated at 5,000 forms. The estimated average burden per respondent is 30 minutes for a total annual burden of 2500 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632-0199.

DATE: Comments on this proposal should be received by December 13, 1988.

ADDRESSES: Send or deliver comments to—C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of

Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horne,

Director.

[FR Doc. 88-27450 Filed 11-28-88; 8:45 am]

BILLING CODE 5325-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Request for Medicare Payment.
- (2) *Form(s) submitted:* G-740B, G-740S, HCFA-1500.
- (3) *OMB Number:* 3220-0131.
- (4) *Expiration date of current OMB clearance:*
- (5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
- (6) *Frequency of response:* On occasion.
- (7) *Respondents:* Individuals or households, Businesses or other for-profit.
- (8) *Estimated annual number of respondents:* 800,000.
- (9) *Total annual response:* 10,515,090.
- (10) *Average time per response:* .0000001 minutes.
- (11) *Total annual reporting hours:* 1.
- (12) *Collection description:* The Board administers the Medicare program for persons covered by the railroad retirement system. The collection will obtain the information needed by the Travelers Insurance Company, the Board's carrier, to pay claims for services and supplies covered under Part B of the program.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692).

Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-27508 Filed 11-28-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

File No.	Rule/Form
270-269.....	Rule 6c-7.
270-267.....	Rule 11a-2.
270-294.....	Rule 17g-1(g).
270-214.....	Rule 0-2 and Forms 4-R, 5-R, 6-R and 7-R.
270-40.....	Form ADV-W, Rule 203-2.
270-42.....	Rule 204-3.
270-217.....	Rule 206(4)-2.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980, the Securities and Exchange Commission has submitted the following matters under the Investment Company Act of 1940 for extension of OMB approval:

Rule 6c-7 provides an exemption from certain provisions of sections 22(e) and 27 of the Investment Company Act of 1940 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program. There are approximately 20 registrants governed by Rule 6c-7, with an estimated compliance time of 30 minutes per registrant.

Rule 11a-2 sets forth conditions for offers of exchange by certain Commission approval. There are approximately 50 registrants governed by Rule 11a-2, with an estimated compliance time of 15 minutes per registrant.

Rule 17g-1(g) requires that a registered management investment company file with the Commission a copy of the bond covering its officers and employees and information about any claim or other action taken with respect to the bond. There are approximately 2,800 registrants governed by Rule 17g-1(g), with an estimated compliance time of one hour per registrant.

Notice is also hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted the following matters under the Investment Advisers Act of 1940 for extension of OMB approval:

Rule 0-2 is titled Consent to Service of Process to be furnished by Non-resident Investment Advisers and by Non-resident General Partners or Managing Agents of Investment Advisers; and Forms 4-R, 5-R, 6-R, and 7-R, are titled Irrevocable Appointments of Agent for Services of Process, Pleadings and Other Papers, by Individual Non-resident Investment Advisers, and Non-resident General Partners of Investment Advisers, respectively. There are approximately 3 registrants governed by rule 0-2, with an estimated compliance time of one hour per registrant.

Rule 203-2 governs withdrawal from registration under the Advisers Act and Form ADV-W is the form for withdrawing registration under the Advisers Act. Approximately 555 registrants file Form ADV-W annually, with an estimated compliance time of 1 hour per registrant.

Rule 204-3 requires certain written disclosure statements. There are approximately 14,400 investment advisers governed by Rule 204-3, with an estimated compliance time of one half hour per registrant per client.

Rule 206(4)-2 governs the custody or possession of funds or securities by registered investment advisers. There are approximately 720 registrants governed by rule 206(4)-2, with an estimated compliance time of 106 hours per registrant.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gray Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street,

NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Project (3235-0276) Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

November 17, 1988.

Johathan G. Katz,
Secretary.

[FR Doc. 88-27452 Filed 11-28-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council Meeting; Public Meeting; Florida

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Miami, will hold a public meeting at 2:00 p.m. on Thursday, December 15, 1988, at the Comfort Inn at the Fort Lauderdale/Hollywood International Airport, 2520 Stirling Road, Hollywood, Florida 33020, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 1320 South Dixie Highway, Suite 501, Coral Gables, Florida 33146-2911, 308/350-5533.

November 22, 1988.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 88-27411 Filed 11-28-88; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting; Kansas

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Wichita, will hold a public meeting, at 11:30 a.m. Wednesday, December 14, 1988, at the Executive Dining Room, on the third floor of the First National Bank located at 105 North Main Street in Wichita, Kansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Clayton Hunter, District Director, U.S. Small Business Administration, Wichita

District Office, 110 East Waterman, Wichita, Kansas, 316/269-6599.

November 22, 1988.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 88-27409 Filed 11-28-88; 8:45 am]

BILLING CODE 8025-01-M

Region VII St. Louis District Advisory Council Meeting; Public Meeting; Missouri

The U.S. Small Business Administration Region VII St. Louis District Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 8:30 a.m. on Tuesday, December 13, 1988, at Peat Marwick Main and Co., 1010 Market Street, 19th Floor Conference Room, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, Room 242, St. Louis, Missouri, 63101-(314) 539-6600.

November 22, 1988.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 88-27410 Filed 11-28-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting; Oklahoma

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting at 10:00 a.m. to 3:00 p.m. on Wednesday, December 14, 1988, at Metro Tech, 201 NE. 48th, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Truman Branscum, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102—Tel: (405) 231-5237.

November 22, 1988.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 88-27412 Filed 11-28-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending November 18, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*) The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45942

Date Filed: November 15, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 13, 1988.

Description: Applications of Louisiana-Pacific Corporation, pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas charter air transportation of persons and property between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 45943

Date filed: November 15, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 13, 1988.

Description: Application of Louisiana-Pacific Corporation, pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in foreign charter air transportation of persons and property between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any points thereof.

Docket No.: 45944

Date filed: November 16, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 14, 1988.

Description: Application of Mid Pacific Corporation pursuant to section 401(d)(1) of the Act and Subpart Q of the

Regulations authority to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Docket No.: 45945

Date filed: November 16, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 14, 1988.

Description: Application of Mid Pacific Air Corporation pursuant to section 430(d)(3) of the Act and Subpart Q of the Regulations, requests authority to engage in foreign charter air transportation of persons, property and mail.

Docket No.: 45483

Date Filed: November 15, 1988.

Due Date for answers, Conforming Applications, or Motions to Modify Scope: December 13, 1988.

Description: Amendment No. 1 to the Applications of Aero-Chago, S.A., requests amendment of its existing permit to authorize scheduled foreign air transportation of property and mail over the following routes: Between a point or points in the Dominican Republic and the terminal point Miami, Florida. Between a point or points in the Dominican Republic and the terminal points in Borinquen, Ponce, Mayaguez and San Juan Puerto Rico.

Docket No.: 45922

Date filed: November 17, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 15, 1988.

Amendment No. 1 the Application of Aviacion Del Noroeste, S.A. de C.V. supplements its application for a foreign air carrier by requesting that Hermosillo-Tucson and Guaymas-Tucson (Route A.5.) authority be added to the scheduled authority ANSA is seeking.

Docket No.: 45948

Date Filed: November 18, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 16, 1988.

Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide nonstop service between Los Angeles, California, and Sydney, New South Wales, Australia.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 88-27463 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-11-37; Docket 45959]

Order Instituting; United States-Mexico All-Cargo Service Proceeding

AGENCY: Department of Transportation.

ACTION: Institution of the United States-Mexico All-Cargo Service Proceeding to consider certificate applications by seven U.S. carriers to provide all-cargo scheduled service between the United States and Mexico, Order 88-11-37, Docket 45959.

SUMMARY: Under the terms of a U.S.-Mexico Memorandum of Understanding, the United States can designate no more than three U.S. carriers for all-cargo service over the following route: Oakland, Indianapolis, Columbus, Dayton, Louisville, Harlingen, McAllen, Memphis, Newburgh, Miami, Houston-Chihuahua, Guadalajara, Monterrey, Merida, Toluca.

This route may be divided into separate city-pair markets on the condition that only one U.S. carrier may serve each city-pair market.

The Department has decided to institute an oral evidentiary proceeding before an Administrative Law Judge to select three U.S. carriers for all-cargo Mexico service and also, to select the city-pair markets that these carriers may serve. The proceeding will also consider whether the existing dormant certificate authority of Airlift International for Mexico all-cargo service should be denied.

The Department will consolidate into this proceeding the certificate applications for all-cargo Mexico authority filed by Federal Express Corporation, Amerijet International, The Flying Tiger Line, Aerial Transit Company, United Parcel Service, and Evergreen International Airlines. All of these carriers, except Evergreen, also filed corresponding exemption applications. The Department is dismissing all of these exemption applications.

DATES: Applications, motions to consolidate and petitions for reconsideration are due not later than December 7, 1988. Answers are due not later than December 12, 1988.

ADDRESS: Applications, motions to consolidate and petitions for reconsideration should be filed in Docket 45959 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45959, the Department's Office of Administrative Law Judges and Mr.

Robert Goldner, P-7, at the same address.

Dated: November 22, 1988.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-27464 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Revision No. 2]

Approval of Noise Compatibility Program; Hartsfield Atlanta International Airport, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on Revision No. 2 of the noise compatibility program submitted by the City of Atlanta under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On October 16, 1984, the FAA determined that the noise exposure maps submitted by the City of Atlanta under Part 150 were in compliance with applicable requirements. On April 10, 1985, the Administrator approved the Hartsfield Atlanta International Airport noise compatibility program, and on June 25, 1987, the Administrator approved the first revision to the noise compatibility program. The second revision to the noise compatibility program was approved by the Administrator on October 24, 1988. All of the recommendations of the program revision were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator in the original or revised noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Hartsfield Atlanta International Airport noise compatibility program Revision No. 2 is October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Charles V. Prouty, Program Manager, Hartsfield Airports District Office, Suite 310, 3420 Norman Berry Drive, Hapeville, Georgia 30354, telephone (404) 763-7631. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has

given its overall approval to Revision No. 2 of the noise compatibility program for Hartsfield Atlanta International Airport, effective October 24, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

- The noise compatibility program, including revisions, was developed in accordance with the provisions and procedures of FAR Part 150;
- Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;
- Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements; or intrude into areas preempted by the Federal government; and
- Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program, including revisions, are delineated in FAR Part 150, § 150.5. Approval is not a

determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Atlanta, Georgia.

The City of Atlanta submitted to the FAA on June 19, 1984, the noise exposure maps, descriptions, and under other documentation produced during the noise compatibility planning study conducted from 1982 through 1984. The Hartsfield Atlanta International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 16, 1984. Notice of this determination was published in the *Federal Register* on October 29, 1984.

The revised Hartsfield Atlanta International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1992 and beyond. It was requested that the FAA evaluate and approve the material as a noise compatibility program revision as described in section 104(b) of the Act. The FAA began its review of the program revision on July 25, 1988, and was required by a provision of the Act to approve or disapprove the program revision within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program revision within the 180-day period shall be deemed to be an approval of such revision.

The submitted program contained five proposed actions for noise mitigation, one of which was changed by the proposed program Revision No. 2. The FAA completed its review and determined that the procedural and substitute requirements of the Act and FAR Part 150 have been satisfied. The overall program revision, therefore, was approved by the Administrator effective October 24, 1988.

Outright approval was granted for the revision to the specific program element.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 24, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Commissioner of Aviation, Hartsfield Atlanta International Airport.

Issued in Atlanta, Georgia, November 8, 1988.

Samuel F. Austin,

Manager, Atlanta Airport District Office.

[FR Doc. 88-27445 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Phoenix, Arizona under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1250.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Sky Harbor International Airport, are in compliance with applicable requirements of FAR Part 150, effective November 4, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Phoenix on December 30, 1987. The FAA has determined that the noise exposure maps for Sky Harbor International Airport are in compliance with applicable requirements. This determination is effective on November 4, 1988. FAA's determination on an airport operator's noise exposure is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of the program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps

are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Room 6E25, Hawthorne, California 90261. Mr. Neilson A. Berthoff, Jr., Phoenix Aviation Department, 3400 Sky Harbor Boulevard, Phoenix, Arizona 85034-4420.

Issued in Hawthorne, California, on November 4, 1988.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 88-27438 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice, Santa Maria Public Airport, Santa Maria, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Santa Maria for Santa Maria Public Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Conley, Environmental Protection Specialist, AWP-611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1621.

SUPPLEMENTARY INFORMATION: Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation

Regulations (FAR) Part 150, promulgated to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Santa Maria. The specific maps under consideration are in the submission. The FAA has determined that these maps for Santa Maria Public Airport are in compliance with applicable requirements. This determination is effective on November 4, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airport Division, 15000 S. Aviation Boulevard, Room 6E26, Hawthorne, California 90261

Dan J. Hoback, General Manager, Santa Maria Public Airport District, 3217 Skyway Drive Santa Maria, California 93455.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne on November 4, 1988.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 88-27446 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Clark County, Nevada under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 3, 1988.

FOR FURTHER INFORMATION CONTACT: David Cross, Airport Planner, Federal Aviation Administration, Airport District Office, 831 Mitten Road, Burlingame, California 94010, (415) 876-2779.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for McCarran International Airport, Las Vegas, Nevada are in compliance with applicable requirements of FAR Part 150, effective November 3, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA, noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Clark County on March 1, 1988. The FAA has determined that the noise exposure maps for McCarran International Airport are in compliance with applicable requirements. This determination is effective on November 3, 1988. FAA's determination on an airport operator's noise exposure is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of the program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it would be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 203 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps

are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airport District Office, 831 Mitten Road, Burlingame, California 94010.

Mr. Robert Broadbent, Director of Aviation, McCarran International Airport, Las Vegas, Nevada 89111-1005.

Issued in Hawthorne, California, on November 3, 1988.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 88-27437 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Nashville, International Airport, Nashville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Metropolitan Nashville Airport Authority for Nashville International Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Principal Planner/Programmer, Airport District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118-3004; telephone number 901/521-3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Nashville International Airport are in compliance with applicable requirements of Part 150, effective November 14, 1988.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community,

government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Metropolitan Nashville Airport Authority. The Specific maps under consideration are the "FY 1988 Noise Exposure Map" and "FY 1993 Baseline Noise Exposure Map" in the submission. The FAA has determined that these maps for Nashville International Airport are in compliance with applicable requirements. This determination is effective on November 14, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification

by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118-3004.

Metropolitan Nashville Airport Authority, Communication Division, 4th Floor One Terminal Drive, Suite 501, Nashville, TN 37214, 615-275-1610.

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Memphis, Tennessee, November 14, 1988.

John M. Dempsey,

Manager, Memphis Airports District Office.

[FR Doc. 88-27447 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Metropolitan Knoxville Airport Authority for the McGhee Tyson Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the McGhee Tyson Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 8, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 9, 1988. The public comment period ends January 8, 1989.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Civil Engineer, Airports District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee

38118-30004; telephone number 901/521-3495.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the McGhee Tyson Airport are in compliance with applicable requirements of Part 150, effective November 9, 1988. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 8, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Metropolitan Knoxville Airport Authority submitted to the FAA on January 5, 1988, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from January 1986 to December 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Metropolitan Knoxville Airport Authority. The specific maps under consideration are "Noise Exposure Map:

1986 Operations" and "Noise Exposure Map—1991 Operations" in the submission. The FAA has determined that these maps for the McGhee Tyson Airport are in compliance with applicable requirements. This determination is effective on November 9, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification of the airport operator, under §150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the McGhee Tyson Airport, also effective on November 9, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 8, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, §150.33. The primary considerations in the evaluation process

are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118-3004.

Mr. Terry Igoe, Executive Director, Metropolitan Knoxville Airport Authority, McGhee Tyson Airport, Alcoa, Tennessee 37701.

Questions may be directed to the individual named above under the heading, "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Memphis, Tennessee, November 8, 1988.

Wayne R. Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 88-27448 Filed 11-28-88; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-838]

International Shipholding Corp.; Amendment to Application for Permission Under Merchant Marine Act, to Acquire Waterman Marine Corp. and Waterman Industries Corp.

International Shipholding Corporation and its subsidiaries (ISC) by letter dated November 16, 1988, has requested an amendment to the **Federal Register** Notice dated November 16, 1988 (53 FR 46178) in order that the sentence beginning in paragraph seven, line six, should read: "ISC also owns a 14 percent interest in one management firm and a 50 percent interest in two management firms offering ship services in Norway, the Netherlands, and Singapore."

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS) and 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.
James E. Saari,
Secretary.
[FR Doc. 88-27510 Filed 11-28-88; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Series Cir.; Public Debt No. 31-88]

Treasury Notes of November 30, 1990, Series AH-1990

Washington, November 17, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$9,000,000,000 of United States securities, designated Treasury Notes of November 30, 1990, Series AH-1990 (CUSIP No. 912827 WX 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 30, 1988, and will accrue interest from that date, payable on a semiannual basis on May 31, 1989, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public

moneys. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of \$5,000, \$10,000, \$100,000, and \$1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 22, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 21, 1988, and received no later than Wednesday, November 30, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers

and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent

to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Wednesday, November 30, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, November 28, 1988. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, November 30, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-27575 Filed 11-28-88; 3:13 pm]

BILLING CODE 4810-40-M

[Dept. Cir.; Public Debt Series No. 32-88]

Treasury Notes of February 15, 1994 Series H-1994.

Washington, November 17, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$7,500,000,000 of United States securities, designated Treasury Notes of February 15, 1994, Series H-1994 (CUSIP No. 912827 WY 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amount of the Notes may be issued at the average price to

Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 1, 1988, and will accrue interest from that date, payable on a semiannual basis on August 15, 1989, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 23, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 22, 1988, and received no later than Thursday, December 1, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The

minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which

tenders are accepted, an interest rate will be established, at a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Thursday, December 1, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are

not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, November 29, 1988. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, December 1, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-27576 Filed 11-25-88; 3:13 pm]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1988 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Fidelity and Guaranty Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1988 Revision, on page 25061 to reflect this addition:

Fidelity and Guaranty Insurance Company

Business Address: 100 Light Street,
P.O. Box 1138, Baltimore, MD 21203.
Underwriting Limitation: \$1,148,000.
Surety Licenses: All except AS, HI,
GU, PR, WY, VI.

Incorporated in: Iowa.

Certificates of Authority expire on June 30th each year unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (32 CFR Part 223). A list of qualified companies is published annually as of July 1st in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: November 10, 1988.

Mitchell A. Levine,

*Assistant Commissioner, Comptroller,
Financial Management Service.*

[FR Doc. 88-27454 Filed 11-28-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1988 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Nordia Insurance Co.

The Western Fire Insurance Company, a Kansas corporation, has formally changed its name to Nordia Insurance Company, effective June 7, 1988. The Company was last listed as an acceptable surety on Federal bonds as

The Western Fire Insurance Company at 53 FR 25079, July 1, 1988.

Notice is also given that the Company's business address has been changed to P.O. Box 886, Shelton, CT 06484-0886.

Although the Company wishes to retain its Certificate of Authority, it has informed the department of Treasury that it will temporarily stop writing Federal Surety bonds. Therefore, until further notice, Federal bond-approving officers should not accept bonds written by Nordia Insurance Company. In accordance with this notice, Federal Bond-approving officers should annotate their reference copies of Treasury Circular 570, 1988 Revision appropriately.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, or by calling (202) 287-3921.

Dated: November 10, 1988.

Mitchell A. Levine,

*Assistant Commissioner, Comptroller,
Financial Management Service.*

[FR Doc. 88-27453 Filed 11-28-88; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Grant Program; Summer English Teaching Institute for South African Educators

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) plans to sponsor a Summer English Teaching Institute for twenty-five South African secondary school teachers and teacher trainers. Participants will be individuals involved with English teaching in black education and will be drawn from schools, teacher training institutions, and the non-formal sector. Minimum qualification will be a two-year teacher training diploma beyond secondary school. USIA is asking for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of teaching English-as-a-Second Language (EFL)/English-as-a-Second Language (ESL) and special expertise in handling cross-cultural programs.

The general objective of the Institute is to support and encourage the upgrading of secondary education for blacks in the field of English. The program should be designed for secondary level classroom teachers with responsibilities in curriculum planning and course material development, and

teacher trainers with responsibilities in supervision and staff training.

Time Frame and General Description

The Institute should be programmed to last five weeks beginning on or about Friday, July 7, 1989 and ending on or about Sunday, August 13, 1989. The participants will arrive directly at the campus site from their home country. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society should be considered an integral part of the Institute and should be held on the first two to three days of the program.

The applicant is asking to design a program with emphasis on methodology, supervision, and teaching techniques in EFL/ESL which will meet the special needs of secondary school teachers and teacher trainers from South Africa. The program should maintain a relative balance among discussion sessions, lectures, workshops, and practicums. Lengthy lectures should not be the usual format.

The academic program should be complemented by ample time for interaction with American students, faculty, and administrators, and the local community to improve the participants' understanding of the United States. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from a variety of backgrounds.

Following the program at the university participants will have a short professional/cultural tour of the U.S. which will be handled by a separate contract agency.

Program Objectives

Some specific areas to address in the Institute are:

1. English-as-a-Second Language/English-as-a-Second Language methodology in theory and practice; policy issues in the use of English as a medium of instruction for non-native English speakers; transition from mother tongue instruction to English.
2. Language enhancement in communication, pronunciation, syntax, writing, and reading.

3. Enhancement of pedagogical skills, curriculum development, development of teacher-made materials; development of curriculum materials during the Institute which can be used in home country.

4. Development of supervisory skills in observation and evaluation of classroom teachers, training teachers to handle individual and small group needs in classes with fifty or more students.

5. For teacher trainers: Enhancement of teacher training skills; development of in-service training programs for teachers; designing and conducting workshops to train EFL/ESL teachers.

6. Visits to on-going EFL/ESL classes in local educational or community centers, providing participants with opportunities to practice EFL/ESL skills.

7. Involving participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

8. Evaluation of various components of the Institute as well as the entire Institute.

9. To the extent possible, Institute materials should be chosen and/or designed to be useful upon returning to South Africa.

A short professional/cultural tour of selected sites in the United States will follow the Institute. A separate contract agency will be responsible for the post-institute tour and will handle all programming and logistics, management, and expenses of the tour. USIA will inform the Institute grantee of these arrangements at the time of the grant award. The university hosting the Institute will be expected to provide consultation and advice to the organization responsible for programming the post-institute tour.

Requirements

All Institute programming and administrative logistics, management of the academic program, local travel, and on-site university arrangements will be the responsibility of the university including enrolling participants in Teachers of English to Speakers of Other Languages (TESOL). USIA will be responsible for all communications to and from the U.S. Information Service posts in South Africa, and will provide the university with participants biodata and itineraries and offer any advice or guidance the university might find useful. USIA will also handle travel arrangements from South Africa to the Institute.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The proposal must clearly demonstrate quality on-site management capabilities for the academic and cross-cultural components of the Institute. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage interactions between foreign educators and Americans.

All submitted proposals should include the following:

1. A detailed plan in response to the needs and objectives outlined above. The detailed narrative should outline the structure and organization of the Institute including a day-by-day agenda. It should also include a proposed list of appropriate books, reading or preparatory materials which would be sent to participants before their departure for the U.S. providing them with the topics to be discussed, as well as practical suggestions for preparing for their stay at the University.

2. Current *curricula vitae* of proposed faculty and consultants.

3. A specific and detailed line item budget for both administrative and program costs. Included in the budget worksheet should be budget explanations detailing how costs were computed, i.e. salaries should include position title, annual salary, and percent of effort used for this program. The budget should include and elaborate on each of the following:

a. Tuition, salaries and benefits, or services (including support staff) for the Institute program and other direct costs.

b. Housing and board at the university; for example, faculty residences, graduate dormitories, home stays, or other if necessary.

c. Transportation costs for all travel during the course of the Institute. (International travel arrangements will be made by USIA and other domestic travel will be handled by the agency programming the post-institute tour).

d. Miscellaneous costs such as daily maintenance (\$10.00 per participant), honoraria, film rentals, certificates, cultural activities, support materials, supplemental book allowance (\$150 per participant) and TESOL membership fees.

e. University contributions or cost sharing and/or private sector contributions.

f. Indirect costs which should be held to a minimum.

For your guidance, our experience with similar institutes would indicate that the cost to USIA for this Institute should probably not exceed \$90,000. Based on the final number of participants some modifications may be necessary following the grant award.

Evaluation Criteria

A panel of senior USIA officers experienced in TEFL, the exchange of international educators, and African affairs will use the following criteria when evaluating proposals:

(1) Quality and creative design of the Institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the Institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical EFL/ESL program;

(4) Demonstrated high quality EFL/ESL programs—experience with South Africa is desirable;

(5) A quality evaluation at the conclusion of the situation;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the Institute;

(8) The availability of local and state resources for the orientation and Institute;

(9) Access to EFL/ESL professionals and programs from various universities and organizations;

(10) Cost-effectiveness.

Applicants should submit 10 copies each of a 500 word summary, a proposal not to exceed 20 typed, double-spaced pages, the detailed budget, and a completed and signed application cover sheet (enclosed). Final proposals must be received in the Agency by close of business January 27, 1989. The proposal should be submitted to: U.S. Information Agency, Office of Academic Programs, Africa Branch, E/AEA Attn: Dr. Ellen Berelson, Room 232, 301 4th Street, SW., Washington, DC 20547, Phone (202) 485-7355.

Date: November 16, 1988.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 88-27520 Filed 11-28-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

November 23, 1988

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND PLACE: 10:00 a.m., November 30, 1988.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Lois D. Cashell, Secretary Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agency; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 887th Meeting—November 30, 1988, Regular Meeting (10:00 a.m.)

- CAP-1. Project No. 10418-003, City of Harrisburg, Pennsylvania
- CAP-2. Project No. 2842-013, City of Idaho Falls, Idaho
- CAP-3. Project No. 6765-005, BME Enterprises, Inc.
- CAP-4. Project No. 2512-011, Elkem Metals Company
- CAP-5. Project No. 9419-002, JDJ Energy Company
- CAP-6. Project No. 2716-013, Virginia Electric and Power Company
- CAP-7. Project No. 516-056, South Carolina Electric & Gas Company
- CAP-8. Project No. 2785-008, Wolverine Power Corporation
- CAP-9. Docket No. UL88-12-001, Central Vermont Public Service Corporation
- CAP-10. Docket No. UL88-16-001, Central Vermont Public Service Corporation
- CAP-11. Docket No. UL88-17-001, Central Vermont Public Service Corporation

- CAP-12. Docket No. QF87-345-001, City of Burlington, Vermont, Electric Department and Winooski One Partnership
- CAP-13. Project No. 10405-004, Craig W. Scott
- CAP-14. Omitted
- CAP-15. Docket Nos. UL87-16-001 and UL87-17-001, Niagara Mohawk Power Corporation
- CAP-16. Project No. 2920-006, Truckee Donner Public Utility District
- CAP-17. Project No. 2114-013, Public Utility District No. 2 of Grant County, Washington
- Project Nos. 943-002 and 2145-000, Public Utility District No. 1 of Chelan County, Washington
- Project No. 2149-002, Public Utility District No. 1 of Douglas County, Washington
- Docket No. E-0569-001 (Vernita Bar Phase), State of Washington Department of Fisheries v. Public Utility District No. 2 of Grant County, Washington
- CAP-18. Docket No. EL88-37-000, Kentucky Utilities Company
- CAP-19. Docket No. QF88-507-000, U.S. Army Corps of Engineers
- CAP-20. Docket No. EC88-23-001, Tucson Electric Power Company, San Diego Gas and Electric Company, SD Acquisition Corp. (California), and San Diego Acquisition Corp.
- CAP-21. Docket No. ER84-348-009, American Electric Power Service Corporation
- CAP-22. Docket No. EL87-30-005, Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company and Holyoke Power and Electric Company
- CAP-23. Docket No. ER83-657-004, Houston Lighting and Power Company
- CAP-24. Docket No. EL88-20-000, Kentucky Utilities Company
- Docket No. EL88-32-000, Nevada Power Company

Consent Miscellaneous Agenda

- CAM-1. Docket No. GP87-60-001, Transcontinental Gas Pipe Line Corporation v. Enstar Petroleum Company
- CAM-2. Docket No. GP88-2-001, Fores! Oil Corporation
- CAM-3. Docket No. IN83-1-059 (Phase II), Amoco Production Company, *et al.*
- CAM-4. Docket No. SA88-5-001, Red River Gas Pipeline Corporation

- CAM-5. Docket No. RM87-17-002, Natural Gas Data Collection System

Consent Gas Agenda

- CAG-1. Docket Nos. RP89-14-000 and 001, Inter-City Minnesota Pipelines Ltd.
- CAG-2. Docket No. RP89-16-000, Transwestern Pipeline Company
- CAG-3. Docket Nos. RP85-58-022, TA85-1-33-011, RP85-58-023 and TA85-1-33-012, El Paso Natural Gas Company
- CAG-4. Docket Nos. RP88-92-004, TQ89-1-11-001, TM89-1-11-000 and RP88-124-003, United Gas Pipe Line Company
- CAG-5. Docket Nos. RP82-55-038 and RP87-7-007, Transcontinental Gas Pipe Line Corporation
- CAG-6. Docket No. RP88-180-004, Trunkline Gas Company
- CAG-7. Docket No. RP88-94-010, Natural Gas Pipeline Company of America
- CAG-8. Docket Nos. TQ89-1-22-000, TQ89-1-22-001, RP89-15-000 and RP89-15-001, CNG Transmission Corporation
- CAG-9. Docket No. TQ89-1-28-000, Panhandle Eastern Pipe Line Company
- CAG-10. Docket No. TQ89-1-25-000, Mississippi River Transmission Corporation
- CAG-11. Docket No. TQ89-1-63-000, Carnegie Natural Gas Company
- CAG-12. Docket No. TQ89-1-15-000, Mid Louisiana Gas Company
- CAG-13. Docket No. RP88-240-002, Panhandle Eastern Pipe Line Company
- CAG-14. Docket No. RP88-239-001, Trunkline Gas Company
- CAG-15. Docket Nos. RP88-177-003 and RP88-230-002, Texas Gas Transmission Corporation
- CAG-16. Docket No. RP88-241-002, Panhandle Eastern Pipe Line Company
- CAG-17. Docket No. TQ89-1-55-000, Questar Pipeline Company
- CAG-18. Omitted
- CAG-19. Docket Nos. RP82-121-001 and RP82-125-024, Tennessee Gas Pipeline Company
- CAG-20. Docket No. RP88-96-007, Southern Natural Gas Company

CAG-21.
Docket No. RP85-125-023, Tennessee Gas Pipeline Company

CAG-22.
Docket No. RP88-243-001, Transcontinental Gas Pipe Line Corporation

CAG-23.
Docket No. RP88-246-002, ANR Pipeline Company

CAG-24.
Docket Nos. RP85-58-024 and TA85-1-33-013, El Paso Natural Gas Company

CAG-25.
Docket Nos. RP88-249-001 and RP88-228-004, Tennessee Gas Pipeline Company

CAG-26.
Docket No. RP85-141-010, Texas Gas Transmission Corporation

CAG-27.
Docket No. RP88-251-003, Texas Eastern Transmission Corporation

CAG-28.
Docket Nos. TQ89-1-33-001, TM89-1-33-001, TA88-1-33-000 and TA88-3-33-002, El Paso Natural Gas Company

CAG-29.
Docket No. RP88-239-003, Trunkline Gas Company

CAG-30.
Docket No. RP88-240-001, Panhandle Eastern Pipe Line Company

CAG-31.
Docket No. RP88-241-001, Panhandle Eastern Pipe Line Company

CAG-32.
Docket Nos. RP83-35-038 and 041, Texas Eastern Transmission Corporation

CAG-33.
Docket Nos. RP88-181-004 and RP86-94-011, Sea Robin Pipeline Company

CAG-34.
Docket No. RP87-47-001, Phillips Gas Pipeline Company

CAG-35.
Docket No. RP88-230-001, Texas Gas Transmission Corporation

CAG-36.
Docket No. RP86-119-007, TA84-2-9-009 and TA85-1-9-006, Tennessee Gas Pipeline Company

CAG-37.
Docket Nos. TA87-2-28-002, Panhandle Eastern Pipe Line Company

CAG-38.
Docket No. ST85-1397-001, The Kansas Power and Light Company

CAG-39.
Omitted.

CAG-40.
Docket No. RP83-93-018, Trunkline Gas Company

CAG-41.
Docket No. RP89-17-000, Northwest Pipeline Corporation

CAG-42.
Omitted.

CAG-43.
Omitted.

CAG-44.
Docket No. RP85-206-003, Northern Natural Gas Company, Division of Enron Corp.

CAG-45.
Docket No. CI87-223-002, OXY USA Inc.

CAG-46.
Docket No. CI88-263-002, Amoco Production Company

Docket No. CI88-312-001, Mobil Oil Exploration and Producing Southeast, Inc.

CAG-47.
Docket No. CI87-860-000, Bob Hurt

CAG-48.
Docket No. CP87-410-002, Great Lakes Gas Transmission Company

CAG-49.
Docket Nos. CP87-407-004 and RP86-136-006, National Fuel Supply Corporation

CAG-50.
Docket Nos. CP87-131-002, CP87-132-000, 001 and 002, Tennessee Gas Pipeline Company

CAG-51.
Docket No. CP88-212-001, West Texas Gathering Company

CAG-52.
Docket No. CP88-656-002, MexUS Interstate Pipeline Company, Inc.

CAG-53.
Docket No. CP85-608-012, National Fuel Gas Supply Corporation

CAG-54.
Docket Nos. CP89-24-000 and CP89-26-000, Panhandle Eastern Pipe Line Company

CAG-55.
Docket No. CP89-69-000, Trunkline Gas Company

CAG-56.
Docket No. CP88-756-000, East Tennessee Natural Gas Company

CAG-57.
Docket Nos. CP82-322-006, 007 and CP82-362-007, Northwest Pipeline Corporation

Docket Nos. CP82-323-007, CP82-370-006, CP82-556-005 and CP84-319-000, El Paso Natural Gas Company

Docket No. CP83-32-001, Pacific Gas Transmission Company

Docket No. CP83-35-002, Pacific Gas and Electric Company

Docket No. CP84-303-000, Gas Company of New Mexico

CAG-58.
Docket No. CP87-506-000, Arkla Energy Resources, a Division of Arkla, Inc.

CAG-59.
Docket No. CP87-395-000, Consumers Power Company

CAG-60.
Docket Nos. CP86-636-004, CP86-735-002, CP87-10-002, CP87-66-002, CP87-84-002 and CP87-21-003, Pacific Gas Transmission Company

Docket No. CP87-19-001, Pacific Gas Transmission Company

Docket No. CP88-276-001 (Not Consolidated), Pacific Gas Transmission Company

CAG-61.
Docket No. CP88-356-009, El Paso Natural Gas Company

Docket No. G-7670-003, Sunterra Gas Gathering Company

CAG-62.
Docket No. CP88-545-000, Southern Natural Gas Company

CAG-63.
Docket Nos. CP87-224-000 and 001, Northwest Gas Pipeline Corporation

CAG-64.
Docket No. CP88-783-000, Lodi Processing Corp. and Jala Pipe Line Corp.

CAG-65.

Docket No. TQ89-1-26-000, Natural Gas Pipeline Company of America

I. Licensed Project Matters

P-1.
Project No. 1250-001, City of Pasadena Water and Power Department. Application for a new license for Azusa project on Forest Service lands.

II. Electric Rate Matters

ER-1.
Docket Nos. ER88-630-000 and ER88-631-000, New England Power Company. Order concerning marginal cost rate filing.

ER-2.
Docket No. EF87-2011-007, United States Department of Energy—Bonneville Power Administration. Order on modified SL-87 rates.

ER-3.
Docket No. EL89-1-000, San Diego Gas and Electric Company, Complainant v. Southern California Edison Company, SCE Corp and James S. Pignatelli, Respondents. Order on complaint.

Miscellaneous Agenda

M-1.
Docket No. FA84-15-003, Minnesota Power and Light Company. Order on court remand concerning fuel adjustment clause.

M-2.
[Reserved]

M-3.
Docket No. RM88-14-001, Interpretation of Section 5 of the Outer Continental Shelf Lands Act

Docket No. RM88-15-000, Regulations under Section 5 of the Outer Continental Shelf Lands Act (OSCLA) Governing Transportation of Natural Gas by Interstate Pipelines on the Outer Continental Shelf. Final rule and rehearing of interpretative rule.

I. Pipeline Rate Matters

RP-1.
Docket No. RP88-182-000, Gas Research Institute. Concerning 1989 funding unit.

II. Producer Matters

CI-1.
[Reserved]

III. Pipeline Certificate Matters

CP-1.
[Reserved]

Lois D. Cashell,
Secretary.

[FR Doc. 88-27525 Filed 11-25-88; 11:18 am]

BILLING CODE 6717-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting
TIME AND DATE: 1:30 p.m.—Wednesday, November 30, 1988 (*Rescheduled*).

PLACE: National Credit Union Administration, 1776 G Street, NW., 6th Floor, Washington, DC 20456.

STATUS: Closed.**CONTACT PERSON FOR MORE**

INFORMATION: Bonnie Nance Frazier,
Director of Communications, 376-3224.

Agenda

1. Approval of FY 1989 Officer Salaries.
2. Merit Award.

Carol J. McCabe,

Secretary.

[FR Doc. 88-27519 Filed 11-23-88; 4:42 pm]

BILLING CODE 7570-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 28, December 5, 12, and 19, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of November 28

Thursday, December 1

10:00 a.m.

Meeting with State of Nevada on High Level Waste Program (*Public Meeting*).

11:30 a.m.

Affirmation/Discussion and Vote (*Public Meeting*).

- a. Order on Shoreham (Tentative) (*postponed* from November 23).

Week of December 5—Tentative

Friday, December 9

11:30 a.m.

Affirmation/Discussion and Vote (*Public Meeting*) (if needed).

2:00 p.m.

Meeting with Public Officials Having Responsibility for Emergency Planning for Pilgrim Nuclear Power Plant (*Public Meeting*).

Week of December 12—Tentative

Thursday, December 15

3:30 p.m.

Affirmation/Discussion and Vote (*Public Meeting*) (if needed).

Week of September 19—Tentative

Monday, December 19

10:00 a.m.

Briefing on Status of NUREG-1150 (*Public Meeting*).

Tuesday, December 20

10:00 a.m.

Briefing on Current Status of Possible Use of Substandard Components in Nuclear Power Plants (*Public Meeting*).

2:00 p.m.

Briefing by DOE on High Level Waste Program (*Public Meeting*).

Wednesday, December 21

11:30 a.m.

Affirmation/Discussion and Vote (*Public Meeting*) (if needed).

2:00 p.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (*Public Meeting*).

Additional Information

By a vote of 5-0 on November 23, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Final Rule—10 CFR Part 62, 'Criteria and Procedures for Granting Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities' " scheduled for November 23, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE

INFORMATION: William Hill (301) 492-1661.

Jack Guttman,

Office of the Secretary.

November 23, 1988.

[FR Doc. 88-27568 Filed 11-25-88; 2:28 pm]

BILLING CODE 7590-01-M

STATE JUSTICE INSTITUTE**TIME AND DATE:**

9:00 a.m. to 5:00 p.m., December 9, 1988

9:00 a.m. to 3:00 p.m., December 10, 1988

PLACE: The Desert Inn Hotel, 3145 Las Vegas Boulevard South, Las Vegas, Nevada.

STATUS: The meeting will be open to the public, except for a brief period on the afternoon of December 9, 1988.

Matters To Be Considered**Portions Open To The Public**

Discussion of FY 1989 Proposed Guideline and consideration of revised applications submitted for Institute funding.

Portions Closed To the Public

Discussion of Internal personnel practices and procedures.

CONTACT PERSON FOR MORE

INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684-6100.

David I. Tevelin,

Executive Director.

[FR Doc. 88-27546 Filed 11-25-88; 11:19 am]

BILLING CODE 6820-SC-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1411]

TIME AND DATE: 10 a.m. (EST), November 30, 1988.

PLACE: DALTON COLLEGE, MEMORIAL AUDITORIUM, 213 NORTH COLLEGE DRIVE, DALTON, GEORGIA.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 9, 1988.

Action Items**New Business**

B—Purchase Awards

B1. Indefinite Quantity Term Agreement BA-41313A with Lehigh Structural Steel Company for Galvanized Structural Steel for Transmission Line Towers, Laced and Low Profile Substation Steel, and Components.

C—Power Items

C1. Arrangements to Assist the Tennessee Department of Human Services and Other Human Service Agencies in Valley States in Providing Certain Weatherization Assistance Programs Primarily for Low-Income and Elderly Persons.

E—Real Property Transactions

E1. Grant of Permanent Easement to Tennessee Department of Transportation for a Highway Right-of-Way Affecting 0.9 Acre of Kentucky Reservoir Property in Henry and Stewart Counties, Tennessee.

E2. Abandonment of Flood Rights Affecting 7.8 Acres of Norris Reservoir Land in Campbell County, Tennessee.

E3. Filing of Condemnation Cases.

E4. Sale of Permanent Easement to the State of Tennessee Department of Transportation Affecting 0.18 Acre of TVA's Jasper Substation in Marion County, Tennessee.

E5. Sale of Permanent and Temporary

Easements to the State of Tennessee
Department of Transportation Affecting 0.38
Acre and 0.04 Acre, Respectively, of TVA's
Jug Substation at Johnson City, Tennessee.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael,
Manager of Public Affairs, or a member
of his staff can respond to requests for
information about this meeting. Call
(615) 632-8000, Knoxville, Tennessee.
Information is also available at TVA's
Washington Office (202) 245-0101.

Dated: November 23, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88-27562 Filed 11-25-88; 12:09 pm]

BILLING CODE 8120-01-M

Test Report Federal Register

**Tuesday
November 29, 1988**

Part II

Department of Labor

**Occupational Safety and Health
Administration**

29 CFR Part 1915

**Shipyard Employment Safety Standards;
Proposed Rules**

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S-050]

Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing explosive and other dangerous atmospheres. The standards proposed for revision regulate safe entry and work carried on in confined spaces on board vessels in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the standards must be supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for shipbuilding, ship repairing, and shipbreaking operations, and as necessary to provide complete coverage for employees performing work not specifically addressed by the shipyard employment standards, or who are performing work in areas of shipyards not specifically addressed by the shipyard employment standards.

This proposed action would update the shipyard employment standards covering work in explosive and other dangerous atmospheres in vessels and vessel sections and would reference applicable general industry standards, such as Subpart S—Electrical, resulting in a single, comprehensive Part 1915, Subpart B, that would apply to all vessels and vessel sections in shipyards (except construction activities covered by Part 1926).

In addition, the proposed provisions are intended to correct problems found in the existing standards which regulate in detail the specific methods and materials to be used to reduce employee exposure to the hazards of entering confined spaces on vessels. The proposed revisions would continue to address the hazards to which employees are exposed, but would do so by deleting many existing specification-type provisions which currently limit employer innovation, and by using performance-oriented provisions as appropriate.

The proposed revision provides conditions for safe entry into confined spaces on vessels; stipulates the safety requirements for performing both cold and hot work in these spaces; regulates the maintenance of safe conditions during occupancy and work; mandates the use of NFPA certified Marine Chemists and Shipyard Competent Persons (SCP) to determine when confined spaces are safe for personnel and work; and requires labeling of unsafe spaces and logging of all test results.

This revised document would raise OSHA standards to the level of existing maritime industry consensus standards, thus precipitating several changes in existing federal regulations. The oxygen content required for unprotected confined space entry would be increased from 16.5 percent by volume to 19.5 percent by volume. The sequence of testing would be rearranged to reflect actual practice so that oxygen, flammability and toxicity are tested in that order. Skilled personnel would be required to test the ships' compartments prior to human occupancy and starting work. The conditions for safely performing hot work in confined spaces would also be delineated. Duplicative paperwork requirements would be eliminated. A non-mandatory appendix has been added to provide additional educational information not suitable for regulation, but useful for employers and employees in understanding the hazards associated with work in confined spaces.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Officer, Docket No. S-050, U.S. Department of Labor, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894.

Written comments and hearing requests received will be available for inspection and copying in Room N-2634, at the above address, from 8:15 a.m. to 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this Notice of Proposed Rulemaking is Susan Troiano Herbert, Office of Maritime Safety

Standards, Occupational Safety and Health Administration.

I. Background

In May 1971, the Occupational Safety and Health Administration, under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 655(a)), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (44 Stat. 1444, as amended; 33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, other Federal standards and national consensus standards were similarly adopted as general industry standards (29 CFR Part 1910) and were made applicable to all aspects of shipyard operations not specifically covered by Parts 1915, 1916, 1917, and the construction safety and health standards (Part 1926). On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29 Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment." This consolidation eliminated duplicate and overlapping provisions within the former three parts but did not alter any substantive requirements. The consolidation had no effect on the applicability of the general industry standards, 29 CFR Part 1910, to hazards or conditions in shipyard employments not specifically addressed in the consolidated standard (see 29 CFR 1910.5(c)).

In 1982, the shipyard industry, represented by the Shipbuilders Council of America (SCA) and the American Waterways Shipyard Conference, requested that OSHA identify and consolidate the specific applicable provisions of the general industry standards into one composite set of shipyard employment standards.

This second consolidation project would help shipyard employers by providing them with a single set of shipyard standards and would eliminate subjective interpretations as to the applicability of Part 1910 provisions. By eliminating the possibility that individuals within the shipyard industry would interpret Part 1910 applicability in different ways, fair and equal notice would be given to all shipyard employers and employees of the rules for shipyard employment safety.

This second consolidation effort will incorporate into the existing internal organization of Part 1915 applicable Part

1910 provisions relating to work in shipyards. This formatting approach utilizes an organizational format which is already familiar to present users of the shipyard standards, and which provides for a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, then new subparts and subpart headings would be created. This new formatting would not, in and of itself, create nor delete any obligations or duties.

II. Summary and Explanation of the Proposal

The subject of work in explosive and other dangerous atmospheres in vessels and vessel sections is currently covered by 29 CFR Part 1915, Subpart B—Explosive and Other Dangerous Atmospheres; by 29 CFR Part 1910, Subpart S—Electrical and by parts of 29 CFR Part 1910, Subpart Z—Toxic and Hazardous Substances.

The standards proposed in this document are intended to reference the applicable Part 1910 provisions into Part 1915, Subpart B; to remove or revise unnecessary provisions; to clarify existing language; and to update the standards to reflect current industry practice and relevant consensus standards. In addition, specification requirements are changed to performance requirements where it is recognized that there is more than one way to comply with a provision. Finally, the competent person definition in Subpart A, covering Subparts B, C, D, and H, has been revised.

This standard covers vessels and vessel sections only. Existing Part 1910 regulations that apply to entry into other enclosed spaces in shipyards have not been incorporated into Subpart B. Instead, they will be incorporated into Part 1915 at a later date in a separate rulemaking for the reasons more fully elaborated below in the discussion of proposed § 1915.11.

A general discussion of all the proposed provisions follows: A reiteration of specific issues upon which OSHA solicits comment is located at the end of this section.

Section 1915.7 Competent person.

OSHA proposes to amend the requirements for, and the duties and skills of, competent persons in shipyard employment. Currently, § 1915.7 of Subpart A defines a competent person for purposes of Subparts B, C, D, and H. As described more fully below, OSHA's

proposed amendments would eliminate the paperwork burden involved in designating competent persons, would clarify the skills required by such persons, and would simplify the requirements regarding logging of inspections and tests.

Section 1915.7, *Competent person*, describes the duties and skills of "competent persons," as applied to Subparts B, C, D, and H.

Paragraph (a)(1) requires that at least one competent person be designated by the employer, unless an NFPA certified Marine Chemist Coast Guard authorized person is always used. This requirement is unchanged from the existing requirement found in § 1915.7(a)(1).

Paragraph (a)(2) would require a certification record containing the minimum information necessary to ensure that employers have designated a competent person or always use a Marine Chemist. This requirement is different from the existing one found in § 1915.7(a)(2). The existing requirement mandates that employers record this information on a government form OSHA 73 and send it to OSHA. The OSHA Form 73 contains information that OSHA now considers irrelevant. By minimizing the amount of information requested and eliminating the transmittal requirement, OSHA proposes to reduce the unnecessary paperwork burden on employers. Public comment is requested in Issue 14.

Paragraph (b) covers the criteria employers must use when selecting those persons to do competent person tasks.

Paragraph (b)(1) requires that the competent person understand the certificate issued by the Marine Chemist or the Coast Guard authorized person. This is unchanged from the existing requirement contained in § 1915.7(b)(1).

Paragraph (b)(2) requires that the competent person have the ability to carry out written instructions left by the Marine Chemist, Coast Guard authorized person or Certified Industrial Hygienists. The existing requirement, § 1915.7(b)(1), requires him or her to carry out all written and oral instructions. All instructions must be clearly written down to reduce the possibility of not following instructions. Serious accidents could result if instructions are not followed or are misunderstood.

Paragraph (b)(3) requires that competent persons know how to calibrate correctly, and how to use and interpret testing equipment used to conduct the tests required in Subparts B, C, D and H of this part such as flammability tests, oxygen deficiency tests, carbon monoxide tests and follow

up toxicity testing. The existing rule, § 1915.7(b)(2), requires that competent persons know how to use a combustible gas indicator, oxygen indicator, carbon monoxide and carbon dioxide indicators. OSHA believes that the proposed performance language is better suited for regulating the wide variety of test equipment that might be used by competent persons. The proposed standard recognizes there may be one or several appropriate pieces of test equipment needed to test atmospheres, but does not specify nor limit which ones must be used. The proposed standard recognizes that some of the test equipment that will be needed will be toxicity test equipment used to determine if conditions are being maintained as they were originally found. In such a situation, the competent person will have to conduct follow up toxicity testing using instructions left by a Marine Chemist, Coast Guard authorized person, or industrial hygienist. In addition, the proposed standard requires that the competent person know how to calibrate the test instrument. The existing standard does not require this; it assumes that the competent person will know how to calibrate correctly, since calibration is an essential part of correct meter usage. This requirement has been included to stress its importance.

Paragraph (b)(4) requires an understanding and familiarity with Subparts B, C, D and H of this part. Again, this requirement remains unchanged from the existing requirement, § 1915.7(b)(3).

Paragraph (b)(5) requires familiarity with the structure and knowledge of the location and designation of spaces on vessels. It is unchanged from the existing requirement, § 1915.7(b)(4).

Paragraph (b)(6) requires that the competent person be capable of performing the tests and inspections required by Subparts B, C, D and H of this part. This requirement is unchanged from the existing requirement, § 1915.7(b)(5).

Paragraph (b)(7) requires that competent persons have the ability to enter the appropriate information, for example, test results from meter readings, in the required log (OSHA 74). This requirement is the same as the existing requirement, § 1915.7(b)(5).

Paragraph (c) covers logging of inspections and tests and contains the requirements to log all inspections and tests that are required by Subparts B, C, D and H of this part.

Paragraph (1) requires that all competent persons, certified industrial hygienist or Coast Guard authorized

person tests required by Subparts B, C, D and H of this part, be recorded on the OSHA Form 74, "Log of Inspections and Tests by Competent Persons." This requirement is the same as the existing one, § 1915.7(c)(1).

Paragraph (2) requires that employers require Marine Chemists to record their test results and instructions. This requirement is the same as that in existing § 1915.7(c)(3). This proposed revision also eliminates the existing requirement found in § 1915.12(b)(4), that Marine Chemists complete an OSHA 74 in addition to a Marine Chemists certificate. OSHA believes that this requirement is an unnecessary duplication of paperwork. Therefore the requirement has been deleted that the Chemist or employer complete the OSHA 74 in addition to a certificate. Marine Chemists will complete their own Marine Chemist certificate as required by NFPA 306.

Paragraph (3) requires that a separate log be maintained for each vessel and vessel section where tests are done. This is the same as the existing requirement, § 1915.7(c)(1).

Paragraph (4) requires that OSHA 74 logs or Marine Chemist's or Coast Guard authorized person's certificates be available in the immediate vicinity of the work while the operations are progressing. This requirement is found in the existing regulation, § 1915.7(c)(2).

Paragraph (5) requires that the OSHA 74 log and the Marine Chemist certificate required in § 1915.7(c) (1) and (2) be kept for three months from the date of completion of the job. This requirement is unchanged from existing § 1915.7 (c)(2) and (c)(3).

Paragraph (d) provides some exceptional circumstances under which employers are permitted to designate a competent person who does not meet all the criteria of paragraph (b). Employers are permitted to select the competent person based on those criteria in proposed § 1915.7(b) which are applicable to the duties carried out. This section remains unchanged from the existing standard, § 1915.7(d).

Title. OSHA proposes to amend the title of Subpart B to indicate clearly that the subpart applies to vessels and vessel sections only. This is the scope of the present subpart. The title change ensures that the provisions will not mistakenly be applied to other areas of the shipyard that might involve explosive or other dangerous atmospheres.

Section 1915.11 Scope, application and definitions applicable to this subpart.

Paragraph (a) outlines the scope and application of Subpart B. The proposal

would apply to all vessels and vessel sections found in shipyards, and would apply to shipbuilding, shipbreaking and ship repair. Section 1915.11 of the existing standard specifies that §§ 1915.12 through 1915.15 apply only to ship repair and shipbreaking, while § 1915.16 applies only to ship repair. The following chart shows the requirements and coverage of each section as they currently appear in Subpart B.

SCOPE AND COVERAGE OF CURRENT SUBPART B

Section	Requirements	Activity covered
1915.12	Provides requirements for safe entry. Space to be entered/ Test needed Cargo spaces/for flammable/ combustible atmosphere. Cargo spaces, fumigated spaces/ for toxics, corrosives, and irritants. Sealed compartments, spaces coated and closed up/for oxygen deficiency.	Shipbreak- ing, ship repairing.
1915.13	Provisions for safely cleaning spaces and doing other cold work; ventilation and ignition source requirements.	Shipbreak- ing, ship repairing.
1915.14	Indicates spaces and locations that must be tested for flammable atmospheres prior to doing hot work.	Shipbreak- ing, ship repairing.
1915.15	Requirements for maintaining atmospheric conditions in tanks and spaces once work has started.	Shipbreak- ing, ship repairing.
1915.16	Warning signs telling workers which tanks are not safe to enter and which tanks are not safe for hot work.	Ship repairing.

The scope and applicability of the proposed standard differ from the existing standard in two ways: (1) The proposed standard extends coverage to employees in shipbuilding who are currently not protected by §§ 1915.12-1915.16; (2) the proposed standard extends coverage to employees in shipbreaking who are not protected by § 1915.16. There are several reasons for making these changes.

(1) OSHA standards will be in agreement with the National Fire Protection Association's (NFPA) current standard concerning safe entry and

work on marine vessels during shipbuilding, shipbreaking and ship repair, NFPA 306 *Control of Gas Hazards on Vessels* (1938). NFPA 306 (1988) is the national consensus standard that is recognized as the self-regulatory document by the maritime industry. This consensus standard requires that the atmosphere in compartments on marine vessels be tested for oxygen deficiency, flammability, and toxicity prior to entry; that cold work be done safely; that the atmosphere in compartments on marine vessels be tested for flammability prior to hot work; and that conditions be maintained unchanged in the space where work is being done. These requirements apply regardless of whether shipbuilding, shipbreaking or ship repairing is being done.

NFPA 306 is an industry-wide consensus standard used to provide self-regulation for work in explosive, toxic and oxygen deficient atmospheres. OSHA's proposal to expand coverage of Subpart B to shipbuilding, shipbreaking and ship repairing would be in agreement with the existing national consensus standard.

(2) Applying §§ 1915.12-1915.16 to shipbuilding, breaking and repairing is current industry practice.

Approximately 30 groups representing employers, unions, associations and government agencies responded to OSHA's request for comments on the first draft rewrite of Subpart B. None objected to expanding coverage to shipbuilding, shipbreaking and ship repairing. OSHA believes that the primary reason none objected is that this change reflects current industry practice. Therefore, this proposed standard expands the scope to cover all building, breaking and repairing on vessels and vessel sections.

As noted previously, the proposed Subpart B, like the current Subpart, applies to entry and work in vessel and vessel sections and not to enclosed or confined spaces found in other shipyard structures and buildings. The proposed standard incorporates references to sections of Part 1910 which are applicable to entry and work in vessel and vessel sections (such as Subpart S—Electrical).

However, this standard does not incorporate or reference those sections of 29 CFR Part 1910 which address entry into and work in enclosed or confined space atmospheres found in other shipyard structures and buildings. Although there are only a few regulations in 29 CFR Part 1910 that are applicable to confined spaces elsewhere in the shipyard (such as Subpart G—

Occupational Health and Environmental Control, and in Subpart H—Hazardous Materials), these regulations will be incorporated in 29 CFR Part 1915 when those subparts in which they are now included are incorporated. These Part 1910 standards covering yards were not incorporated in the revision of Part 1915, Subpart B, because the existing treatment of confined spaces on vessels is more stringent than it is for the yards themselves. To combine these standards would have resulted in confusion and an unnecessary increased burden for yard owners.

The following chart outlines the major differences in the treatment of confined spaces between existing Part 1915 and 1910:

Subject	Part 1915	Part 1910 Subparts G, H & Q
Who conducts tests of atmospheres?	Marine chemist or shipyard competent person.	Not specified. References to this subject are found in §§ 1910.49(d)(11)(ii); 1910.94(d)(11)(iv); 1910.106(e)(8).
What is the maximum concentration of flammables permitted in the atmosphere?	10 percent of the lower flammable limit (LEL).	Not specified. References to this subject are found in §§ 1910.252(d)(2)(vi)(c); 1910.94(d)(11)(iv).
Where does the standard currently apply?	Vessels and vessel sections.	Shipyards only.

Because of these substantive differences in requirements, 29 CFR Part 1915, Subpart B, will continue to cover only vessels and vessel sections. It will not cover those confined spaces located elsewhere in yards, which will continue to be covered by General Industry requirements for now. Future subpart revisions in the Part 1915 consolidation project will deal with specific shipyard standards in this area.

Paragraph (b) lists and defines the major words used in the proposed standard. Many of the definitions are the same ones found in existing Part 1915, but not specifically in Subpart B. Those which have been added to Subpart B have been taken from Subpart A or from consensus standards and have been added for the sake of clarity. The words defined in proposed Subpart B follow. Unless different definitions are listed in proposed Subpart B, the definitions found in Subpart A are still applicable.

"Adjacent compartments or spaces." This term is used to describe those

compartments or spaces which border on the space where the work is to be done; this term is also used to describe those spaces which are located on the diagonal from the space where the work is to be done. The existing rule provides no definition, but uses the term to describe those spaces or compartments which must be tested and cleaned prior to entry and hot work. The proposed definition, adopted from NFPA 306, paragraphs 3-3.1.4 and 3-3.3.3, reflects the meaning of the term as it is used in the maritime industry. The definition is added for clarity.

"Bulk." This term is used to describe materials that are transferred on or off the vessel via piping systems. The existing rule offers no definition, but uses the term to provide descriptive information regarding the compartments and tanks which must be tested (e.g., those that have carried flammable or combustible liquids or gases in bulk). The proposed definition is adopted from Coast Guard regulations (49 CFR 1.46(t)), and reflects the meaning of the term as used in the maritime industry. The definition is added for clarity.

"Certified Industrial Hygienist." This term is used to mean an individual who is certified by the American Board of Industrial Hygiene.

"Coast Guard authorized person." This term is used in the proposal to refer to that person who meets the requirements of 46 CFR 35.01-1(c)(1) for tank vessels; 46 CFR 71.60-1(c)(1) for passenger vessels; and 46 CFR 91.50-1(c)(1) for cargo and miscellaneous vessels. The Coast Guard authorized person is one who, through the authority of the Officer in Charge of Marine Inspection, can be designated to perform Marine Chemist functions when a Marine Chemist is not reasonably available.

"Competent Person." This term is used to refer to a shipyard competent person who meets the criteria set forth in § 1915.7 of this part.

"Hot work." This term is used to define the different types of hot work, such as welding, riveting, burning, use of powder-actuated tools or similar fire producing operations, and to spell out those circumstances where such work is not classified as hot work for purposes of this subpart. The existing definition is located in two different sections of the standard, §§ 1915.4(r) and 1915.14(a). Those definitions are not in agreement with NFPA 306 because they do not recognize circumstances under which hot work should not be classified as such. The proposed definition combines the existing language from §§ 1915.4(r) and 1915.14(a) and the exceptions permitted under NFPA 306-1988, § 1.5, to

provide a comprehensive definition that recognizes industry practices.

Additionally, examples are provided of both hot work and circumstances under which hot work should not be classified as such. Those examples are located in Appendix A, which provides supplemental information to employers and employees to help them comply with this standard.

"Immediately dangerous to life and health." This term is used to describe an atmosphere that poses an immediate hazard to life or produces immediate debilitating effects on health which is likely to result in death or irreversible injury.

"Inert or inerted atmosphere." This term is used to describe an atmosphere or environment that will not support combustion. The existing standard uses the term in § 1915.14(d)(2) and provides a definition that informs employers what materials to use in inerting, i.e., nonflammable gas or water. Equally important, however, is the need to specify the amount of oxygen that must be removed or the water level necessary to work safely in the space. This information is included in NFPA 306 § 1-6.6, which reflects standard industry practices. OSHA proposes to incorporate the oxygen and water levels identified as necessary by NFPA, for the OSHA definition.

Public comment is solicited on the above subject in Issue Number 1.

"Lower explosive limit." This term describes the minimum concentration of vapor in air below which propagation of a flame does not occur.

"Marine Chemist." This term describes a person who is certified by the National Fire Protection Association (NFPA) in accordance with their "Rules for Certification of Marine Chemists," establishing him or her as a person qualified to determine whether ship construction, alteration, repair or demolition can be safely undertaken.

Public comment is solicited on the above subject in Issue Number 2.

"Not Safe for Hot Work." This term is used to describe those compartments which do not meet the minimum safety criteria necessary to permit the use of ignition sources. This phrase was not defined in the existing regulation, although, in a slightly modified fashion, it was used in § 1915.16(a), i.e., "Not Safe for Fire." The source of the proposed definition is NFPA 306. By including a definition for this term, OSHA insures that the phrase as used is clearly understood.

"Not Safe for Workers." This term is used to describe those atmospheres which are not safe for unrestricted

entry. The term can be used to describe either of two situations which occur. In the first, the space is not safe for workers to enter unless personal protective equipment is worn or the length of time of employee exposure is restricted. In the second, the space is not safe for entry *under any circumstances*, regardless of whether personal protective equipment is worn. An example of such a situation is OSHA's prohibition regarding employee entry into toxic atmospheres above the IDLH level. There is no existing definition of this phrase provided, although it is used in existing § 1915.16(a) (e.g. "Not Safe for Men"). The proposed definition has been adopted from NFPA 306; it will more clearly explain those conditions which comprise unsafe entry.

Public comment is requested in Issue Number 3 as to whether or not the definition of "Not Safe for Workers" should be revised to create a second category of "Safe with Restrictions." Public comment is requested in Issue Number 16 as to use of OSHA PEL's.

"Oxygen-deficient atmosphere." This term is used to describe that volume of oxygen below which respiratory protection must be provided. This requirement has been changed from 16.5 percent oxygen by volume in § 1915.12(c)(1) to 19.5 percent oxygen by volume in this proposal. This change brings the maritime standard into agreement with OSHA's General Industry standards (§ 1910.94(d)(11)(iii)) and NFPA 306, and reflects current industry practice.

"Oxygen-enriched atmosphere." This term is used to describe that volume of oxygen above which it is unsafe to perform hot work. There is no definition provided in the existing standard. The figure of 22.0 percent by volume has been selected since it is high enough to take meter error into consideration, but not so high that it is at a dangerous level. This is more fully discussed in § 1915.12(a)(2).

"Safe for Hot Work." This term is used to describe those conditions that must occur in order for hot work to be done safely. The existing standard uses the term with minor modification (i.e., the existing standard uses "Safe for Fire"), but provides no definition. The source of the proposed definition is NFPA 306. Including this term in OSHA's definitions provides a clear understanding of the conditions that constitute a safe environment for hot work.

"Safe for Workers." This term is used to describe those conditions required for unrestricted, unprotected entry into a space. The existing OSHA standard used the term but did not clearly define

it. OSHA proposes that "Safe for Workers" will mean that all of these conditions have been met: The flammable atmosphere is less than 10 percent LEL; The toxic atmosphere is below the permissible exposure limits (PEL's) in 29 CFR Part 1910, Subpart Z; The residues are not capable of producing toxic concentrations above the permissible exposure limits; And there is at least 19.5 percent oxygen by volume in the space.

The only differences between the existing usage and the proposed definition is that the oxygen level required for safe entry has been raised from 16.5 percent oxygen by volume to 19.5 percent oxygen by volume and the reference to the 1970 American Conference of Governmental Industrial Hygienists threshold limit values has been changed to OSHA PEL's. This action brings the maritime standards into line with OSHA's General Industry standards, NFPA 306, and current industry practice.

"Upper explosive limit." This term is used to describe the maximum concentration of flammable vapor in air above which propagation of a flame does not occur.

"Vessel section." This term is used to describe all sub-assemblies, modules, and other components of a vessel, including those that are not directly attached to the vessel because of construction, repair, or breaking.

"Weather deck." This term is used to refer to the uppermost continuous deck that is exposed to the weather. The term is not defined in the existing standard; it is proposed for inclusion in the revised standard to indicate clearly that portion of the vessel to which reference is made.

Section 1915.12 Precautions before entering compartments or spaces.

This section describes those spaces and types of atmospheres which must be tested prior to entry. In addition, this section provides numerical limits for atmospheric exposures, below or above which employees may not enter or may enter only with personal protective equipment. An employer should refer to § 1915.13 for information on doing cleaning and cold work safely, and to § 1915.14 for information on hot work.

OSHA proposes to rearrange the current organization of § 1915.12. In the existing format, paragraph (a) covers testing of flammable atmospheres, paragraph (b) covers testing for toxic atmospheres, and paragraph (c) covers testing for oxygen deficiency.

Both Newport News and Harbor Testing Laboratory have commented that the existing sequence implies that the tests be conducted in that order. In

actual practice, however, the first test conducted usually is for oxygen. This is because most combustible gas indicators in use today require sufficient oxygen for combustion in order to register an accurate combustible gas indicator reading. In other words, the tester cannot be assured of an accurate LEL reading without first determining the oxygen level. The proposed standard, therefore, covers oxygen deficiency testing first, flammability testing next, and toxicity testing last.

It must be emphasized, however, that neither the existing or proposed standard *requires* testing in any particular sequence. The list of tests to be conducted has been rearranged because it supports a logical testing sequence.

Paragraph (a)(1) describes those compartments and spaces on vessels and vessel sections that must be checked for oxygen deficiency before employees enter them. The specific descriptions are provided in §§ 1915.12(a)(1)(i)-(viii). The existing rule, § 1915.12(c)(1), provides the same requirements for ship repair and ship breaking, but not for new construction. New construction has been added because the same hazards may exist as in repair. This is especially true when paintings and coatings have been applied to tanks during construction. In addition, it is current industry practice to test the atmospheres in such cases.

Paragraph (a)(2) provides that a shipyard competent person must conduct the test required for oxygen deficiency. This requirement is unchanged from the existing rule, § 1915.12(c)(1).

Paragraph (a)(3) requires that the oxygen deficiency test be conducted prior to employees' initial entry into the space. This proposed requirement remains unchanged from the existing requirement, § 1915.12(c)(1).

Public comment is requested in Issue Number 4 regarding the appropriate interpretation of the words "initial entry."

Paragraph (a)(4) proposes to require that employees wear appropriate respiratory protection when there is a risk of being overcome by an oxygen deficient atmosphere in accordance with Subpart I.

The existing rule, § 1915.12(c)(1), requires that a space contain 16.5 percent oxygen by volume before entry is allowed. A second existing rule, § 1915.12(c)(2), requires that any space with less than 16.5 percent oxygen by volume must be ventilated to bring the oxygen level up to 16.5 percent by volume.

There are two differences between the proposed rule and the two existing rules:

(1) The proposed rule raises the oxygen level to 19.5 percent by volume for unprotected entry into a space.

(2) The proposed rule permits entry into spaces containing less than 19.5 percent oxygen by volume provided respiratory protection is worn.

The oxygen level has been increased from 16.5 percent oxygen by volume to 19.5 percent oxygen by volume to be consistent with OSHA's General Industry standard (specifically § 1910.94(d)(11)(iii)), the NFPA 306 standard, ANSI Z88.2-1980, and widespread industry practice.

The existing rule, § 1915.12(c)(2), requiring that spaces be ventilated if below 16.5 percent oxygen by volume, has been eliminated and entry is now permitted with adequate respiratory protection into spaces below 19.5 percent oxygen by volume. The existing rule, § 1915.12(c)(2), required that spaces with oxygen below 16.5 percent must be ventilated to bring the oxygen level up to 16.5 percent or greater for unprotected entry. The purpose of this rule was to ensure that routine work would occur in an atmosphere containing at least 16.5 percent oxygen by volume, and that routine work would *not* be done in an atmosphere containing less than 16.5 percent oxygen. However, there are times when work must occur in atmospheres with less than 16.5 percent oxygen, such as in emergencies and other work of brief duration (see § 1915.12(d)).

In addition, there are times when a space must be inerted to do hot work. When inerted, the space would typically contain between 5 percent and 8 percent oxygen by volume. Using the existing rule, § 1915.12(c)(2), the employer would be required to ventilate to bring the oxygen level up to 16.5 percent by volume, even though doing so would negate the purpose of inerting and create a flammable atmosphere. In other words, following the letter of the law of the existing rule could create a dangerous situation. Therefore, OSHA has changed this rule by dropping the requirement to ventilate a space that is below 16.5 percent oxygen in order to bring the oxygen level up to at least 16.5 percent. This action permits employees to enter spaces which have been inerted by reducing the oxygen content. At such times, employees must wear respiratory protection as required in proposed § 1915.12(a)(4). These changes provide more protection than the existing standard and provide the employer flexibility in achieving safe working conditions. Employees will be provided adequate protection from oxygen

deficient atmospheres through the proper use of respirators.

Public comment is requested in Issue Number 16, regarding the appropriate control measures in oxygen deficient atmospheres.

Paragraph (a)(5) is a new rule which requires employers to label those spaces without at least 19.5 percent oxygen by volume as "Not Safe for Workers." This information is provided so that employers will know how to label spaces after the oxygen testing has been completed.

Paragraph (b) covers "flammable atmospheres" during entry.

Paragraph (b)(1) sets forth the spaces where atmospheres must be tested for flammable vapors and gases prior to employee entry. Only those spaces which are listed in this paragraph and are to be entered must be tested. There is no change from the existing requirements covered in §§ 1915.12(a)(1), (a)(1)(i) and (ii).

Paragraph (b)(2) requires that a competent person conduct the flammability test. This requirement is unchanged from the existing requirement, § 1915.12(a)(1).

Paragraph (b)(3) requires that the flammability test be conducted prior to employees' initial entry into the space. This requirement is unchanged from the existing provision, § 1915.12(a)(1). Public comment is requested in Issue Number 4 regarding the appropriate interpretation of "initial entry."

Paragraph (b)(4) prohibits employees from entering a space if the concentration of flammable vapors or gases is at or above 10 percent of the lower explosive limit. The existing rule contains the same restrictions, but uses a lower explosive limit of greater than 10 percent. The difference is that the proposed rule uses "at or above" 10 percent and the existing rule uses "greater than" 10 percent.

In the existing regulations, there are several places in Subpart B where LEL limits are given, but they are not in agreement with each other. This change, using the cutoff of "at or above" 10 percent of the LEL, is made to provide consistency within the Subpart, and to clarify the cutoff point. NFPA 306 uses "at or above" 10 percent of the LEL as the cutoff.

Paragraph (b)(5) is a new rule requiring that spaces be labeled "Not Safe For Workers" when the concentration of vapor or gas is at or above 10 percent of the lower explosive limit.

Paragraph (b)(6) provides that when flammable substances are also listed in the PEL's, then the testing requirements and other provisions of § 1915.12(c),

"Toxic atmospheres and residues," will apply. The existing provision,

§ 1915.12(a)(3), requires that employees receive respiratory protection if exposed to a toxic flammable gas which is above the PEL but below the level immediately dangerous to life and health. If the substance is both flammable and toxic, the proposed provision specifies that the requirements governing employee entry into spaces that contain, or have contained, toxics will apply in addition to the provisions protecting against fire and explosion.

Paragraph (c)(1) sets forth provisions which describe those compartments and spaces which must be tested or inspected for toxic chemicals prior to entry. The existing rule and the proposed rule cover the same spaces.

Paragraphs (c)(1)(i) and (ii) describe the tests and inspections that must be conducted on the spaces designated in § 1915.12(c)(1). This requirement is unchanged from the existing regulation, § 1915.12(b)(1).

Paragraph (c)(2) requires that the atmospheric test for toxicity and the visual inspection for toxic and corrosive residues be conducted by an NFPA certified Marine Chemist, an Industrial Hygienist certified by the American Board of Industrial Hygiene (ABIH), or a Coast Guard Authorized Person. The existing regulation, § 1915.12(b)(1), states that the required tests and inspections shall be conducted by an NFPA Marine Chemist, an industrial hygienist or other person qualified to make these tests. This proposal still requires that Marine Chemists be NFPA certified, but adds the requirements that industrial hygienists be certified by ABIH and that "other qualified persons" can only be Coast Guard authorized persons.

OSHA had previously responded to a written request to define these three terms—Marine Chemist, industrial hygienist, and other person qualified—by supplying the definitions used in the proposed language of this standard.

Public comment is requested on Issue Number 5 regarding OSHA's proposed definitions of "certified industrial hygienist" and "other qualified person."

Paragraph (c)(3) requiring that all tests and inspections be conducted prior to employees' initial entry remains unchanged from the existing requirement located in § 1915.12(b)(1).

Public comment is requested in Issue Number 4 regarding the interpretation of "initial entry."

Paragraph (c)(4) prohibits employees from entering spaces which have toxic atmospheres above the immediately dangerous to life or health (IDLH) level,

and requires that such spaces be ventilated below the IDLH level if they are to be entered at all. The proposed language also advises the reader of the exception to this requirement permitted by § 1915.12(d), regarding work of brief duration. There is no substantive difference between the proposed standard and the existing requirements in § 1915.12(b)(2).

Paragraph (c)(5) proposes that employees be provided with respiratory protection when toxic contaminants are above the permissible exposure limit but below the IDLH levels. The existing standard, § 1915.12(b)(3) provides the same protection (see § 1915.5). It should be noted that §§ 1910.1001-1910.1500 will continue to apply to vessels and vessel sections.

Paragraph (c)(6) proposes a new rule which indicates clearly that when toxic concentrations are above the permissible exposure limits, the space must be labeled "Not Safe for Workers."

Paragraph (d) proposes to permit work for brief periods of time or in emergencies in atmospheres which are above the upper explosive limit or are otherwise considered immediately dangerous to life or health. In addition, the standard prohibits all ignition sources in such atmospheres, requires that atmospheres that are above the UEL be maintained above the UEL, and requires constant atmospheric monitoring when working in an atmosphere above the upper explosive limit. The existing standard, § 1915.12(d), is the same as the proposed revision except that the prohibition against ignition sources and the requirement for atmospheric monitoring are not currently included but are proposed for addition. Those two caveats have been added to the existing standard because that standard as written might permit unsafe work practices. The three restrictions will provide an added measure of safety. Dilution of an atmosphere in the upper flammable range could bring it into the flammable range. This could occur by simply opening a tank and allowing fresh air to mix with the tank's atmosphere. Prohibiting all ignition sources will minimize the possibility of a fire should the tank's atmosphere become flammable. Constant atmospheric monitoring will forewarn both the employer and the employees if, and when, the tank enters the flammable range.

Public comment is requested in Issue Number 6 regarding work in atmospheres above the upper flammable limit and atmospheres immediately dangerous to life and health.

The "Note" following § 1915.12(d) advises employers that Subpart I of 29 CFR Part 1915 carries additional requirements related to § 1915.12(d). Employees entering atmospheric conditions such as those described in this paragraph must also wear personal protective equipment in accordance with Subpart I of Part 1915. It should be noted that OSHA has also proposed amending Subpart I in a separate rulemaking as part of the overall consolidation project. Any changes to those regulations adopted by OSHA would be applicable to the work and activities covered by this section. Regarding work in UEL and IDLH atmospheres, proposed Subpart I would continue to require that employees be protected from IDLH atmospheres by means of positive pressure, self-contained breathing apparatus or positive pressure airline respirators with an auxiliary self-contained supply of air for escape purposes. (Atmospheres above the UEL may also be IDLH). Subpart I would also continue to require that employees wear protective clothing and gloves designed to protect them from hazards of exposures to chemicals. In addition, Subpart I would continue to require that eye and face protection be provided to employees exposed to liquid chemicals, chemical gases and vapors.

The second part of the "Note" following § 1915.12(d) reminds employers that emergency rescue provisions are required for work in IDLH atmospheres, and that these provisions are also in Subpart I. Newly proposed Subpart I would continue to require written procedures for safe respirator use in IDLH atmospheres; require that a fully equipped stand-by person must be provided and remain in communication when a worker is in an IDLH atmosphere; require that rescue equipment must be located nearby when work is being done in an IDLH atmosphere, and require that employees must wear safety harnesses and lifelines when they use airline respirators in IDLH atmospheres.

Section 1915.13 Cleaning and other cold work.

This section describes those locations where cold work is permitted when certain conditions have been met.

Paragraph (a) provides a description of those spaces to which this section applies. The proposed description is the same as the existing description.

Paragraph (b)(1) provides that liquid residues in the tanks shall be removed as much as possible before manual cleaning starts. The existing rule contains this same provision.

Paragraph (b)(2) requires that a test to determine the concentration of flammable vapors must be done in the space prior to starting cold work. This test needs only be done when a flammable or combustible material was contained or last contained in the space. This provision is unchanged from the existing provision, § 1915.13(a)(3).

Paragraph (b)(3) requires that the flammability test be conducted by a competent person. This requirement is unchanged from the existing provision, § 1915.13(a)(3).

Paragraph (b)(4) requires that flammability tests be conducted frequently during cold work. This requirement is unchanged from the existing provision, § 1915.13(a)(3). However, OSHA has received many requests to define the term "frequently" by specifying in the regulation how often tanks should be checked. Since conditions may vary greatly from one situation to the next, OSHA does not believe that a requirement to recheck a tank at specified intervals would necessarily raise the level of safety. Instead, OSHA believes that the standard should be flexible enough to enable employers and employees to take into consideration all those factors which may influence the need to recheck tank conditions including:

1. Temperature—Higher temperatures will cause liquids to vaporize faster than lower temperatures; the result would be that on hotter days tank residues may produce more vapors with resultant concentrations in excess of 10 percent of the LEL.

2. Work in the tank—Oxygen from a leaking welding hose could cause an oxygen enriched atmosphere; inert gas leaks from welding operations could produce an oxygen deficient atmosphere. Tank cleaning can stir up residues and result in changes in atmospheric conditions.

3. Time elapsed—If a period of time has elapsed since the tank was last checked, it should be rechecked.

4. Unattended tanks—Tanks declared safe and left unattended should be retested prior to entry.

5. Work breaks—When workers take a break or leave at the end of the shift, equipment is sometimes left in the tank. If welding equipment is left, the hoses may leak oxygen or inert gas, producing an oxygen enriched atmosphere in the first case or an oxygen deficient atmosphere in the latter.

6. Ballasting or trimming—Changing the position of the ballast or moving the vessel so as to expose previously trapped cargo, can produce a change in tank atmosphere.

In Issue Number 7, OSHA requests public comment as to whether the frequency of retesting and the factors dictating retesting should be defined in this standard. If a more specific provision is believed appropriate, please provide a proposed definition and your rationale.

Paragraph (b)(5) permits only cold work in the spaces described in § 1915.13(a). Hot work is only permitted as delineated in § 1915.14. This is unchanged from the existing requirement, § 1915.13(a)(4).

Paragraph (b)(6) requires that the work area be kept cleaned up as work progresses. This is unchanged from the existing provision, § 1915.13(a)(1).

Paragraph (b)(7) requires that the concentration of flammable vapors shall be kept below 10 percent of the LEL. This paragraph also references provisions that permit exceptions to this ventilation requirement. This proposal is unchanged from the existing rule, § 1915.13(a)(2).

Paragraph (b)(8) requires that when highly volatile residues are present and their presence prevents the maintenance of 10 percent of the LEL, then 10 percent of the LEL need only be maintained in the major portions of the compartment. This proposed requirement is the same as the existing requirement, § 1915.13(a)(2).

Paragraph (b)(9) requires that the competent person test to determine if exhaust vapors from the spaces being ventilated are accumulating in or around the vessel. This requirement is unchanged from the existing requirement, § 1915.13(a)(5).

Paragraph (b)(10) requires that ignition sources be prohibited in areas where flammable vapors are accumulating. This requirement is unchanged from the existing provision, § 1915.13(a)(5).

Paragraph (b)(11) proposes that any lamps used in areas that have contained flammable or combustible materials shall comply with 29 CFR 1910.307. Section 1910.307 contains the requirements for electrical equipment used in hazardous locations which are classified in § 1910.399. Section 1910.307(b) requires that the equipment, wiring methods and installations of equipment in these hazardous (classified) locations shall be either intrinsically safe, approved for the hazardous location, or safe for the hazardous (classified) location. Under the existing regulations at §§ 1910.307 and 1910.399, the hazardous (classified) locations having contained flammable or combustible materials would be classified as Class I, Division 1, and the Group would be determined by the

specific chemical present. The existing rule, § 1915.13(b), requires that approved, explosion-proof, battery-fed, portable lamps shall be used in any areas that have carried flammables or combustibles. In addition, the existing rule requires that equipment be approved by Underwriters Laboratories, MSHA or the U.S. Coast Guard.

OSHA believes that both the proposed and existing requirements offer the same level of protection. The proposed regulation, however, eliminates specification requirements and permits compliance with an existing general industry standard, § 1910.307, which is equivalent to the level of protection required in the existing standard.

Paragraph (b)(12) requires that smoking and open flames be prohibited on the open deck during cold work on cargo spaces or fuel tanks that have carried flammable or combustible liquids or gases, on spaces or tanks that are adjacent to compartments that have carried flammable or combustible liquids or gases, or on equipment connected to such spaces or tanks. This requirement is unchanged from the existing provision, § 1915.13(c).

Paragraph (b)(13) requires that metallic parts of air moving devices and duct work be bonded. This requirement is unchanged from the existing requirement, § 1915.13(d).

Paragraph (b)(14) prohibits the use of fan blades that can create sparks. The existing standard requires that nonferrous materials be used. The intent of the existing standard was to require the use of non-sparking materials. However, there are some types of stainless steel which are non-ferrous, but depending on content of carbon steel in proportion to nickel, can create sparks. The change to "non-sparking" would clarify the intent of the existing standard.

Paragraph (b)(15) requires that portable air ducts be of non-sparking materials; the existing standard requires non-ferrous materials. Again, the intent of the existing regulation is to prohibit duct material that can cause sparks. The proposed requirement that portable air ducts be of "non-sparking" material better accomplishes the purposes of the regulation.

Paragraph (b)(16) requires that all motors and control equipment meet the same requirements as required by 29 CFR 1910.307 for such equipment in hazardous locations classified in accordance with § 1910.399. The existing standard, § 1915.13(e), requires that such equipment be explosion-proof. The proposed standard clarifies that electrical equipment that is used in a

hazardous location must be intrinsically safe or safe for the particular hazardous location as already required in § 1910.307 (b)(2) (i), (ii), (b)(3), (c) and (d).

Paragraph (b)(17) requires that all motors and control equipment be properly maintained and grounded. This requirement is unchanged from the existing requirement, § 1915.13(e).

The "Note" following § 1915.13(b)(17) serves as a reminder to employers and employees that prior to starting cold work spaces are to be checked for toxic contaminants and appropriate precautions (i.e., ventilation, personal protective equipment or respirators) taken or used when necessary, and in accordance with § 1915.12(c).

Section 1915.14 Hot work.

Section 1915.14 Hot work, addresses the safety precautions that must be taken prior to starting hot work on cargo or fuel tanks, related piping and accessories. This section retains the provision that National Fire Protection Association (NFPA) certified Marine Chemist or Coast Guard authorized persons must certify that certain spaces meet the requirements of "Safe for Hot Work." This section also identifies those locations on vessels where the shipyard competent person is allowed to approve hot work.

Section 1915.14 begins by referring users to Appendix A. Appendix A reminds users that there are other important sections of the Part 1915 regulations relevant to hot work. Those sections, especially Subpart D, Welding, should be reviewed carefully prior to starting hot work.

Paragraph (a) requires that a Marine Chemist or a U.S. Coast Guard authorized person certify certain spaces as "Safe for Hot Work." The Marine Chemist must be an NFPA certified Marine Chemist. The Coast Guard authorized person is that person authorized by 46 CFR 35.01-1(c)(1) (tank vessels and barges), 46 CFR 71.60-1(c)(1) (passenger vessels) and 46 CFR 91.50-1(c)(1) (cargo and miscellaneous vessels) to inspect and test these vessel spaces prior to hot work. There is no difference between the existing requirement and the proposed requirement. The proposed language is easier to understand because the Coast Guard authorized person referred to has been defined in the definitions section and the cited CFR provisions have been reprinted in Appendix B for the convenience of the user.

Paragraph (a)(1)(i) lists those areas on tank vessels requiring Marine Chemist or Coast Guard certification prior to hot

work: Cargo tanks which contain or have contained flammable or combustible liquids or gases in bulk; adjacent spaces; fuel tanks; and pipelines, pumps or any other accessories connected to cargo or fuel tanks. This requirement is unchanged from the existing requirements, § 1915.14(a)(1)(i)-(iii).

Paragraph (a)(1)(ii) lists those areas on dry cargo, miscellaneous and passenger vessels that must be tested by a Marine Chemist or Coast Guard authorized person and certified "Safe for Hot Work" prior to starting any hot work: Cargo spaces that have carried flammable or combustible liquids in bulk; spaces adjacent to cargo tanks that have carried flammable gases, or liquids with a flash point below 150°F., except when there is more than 25 feet between the work and the cargo tank; fuel tanks that have contained fuel; and pipelines, pumps or any other accessories connected to the fuel or cargo tanks. This paragraph is unchanged from the existing provisions, § 1915.14(a)(2) (i) through (iv).

Paragraph (a)(2) provides the criteria used to determine if a space is "Safe for Hot Work." The four criteria are based upon the existing criteria in NFPA 306, and one proposed change to NFPA 306. Paragraph (a)(2)(i) requires that the oxygen level in the space be 22.0 percent or less by volume. This level of oxygen or lower provides a safe, non-oxygen enriched atmosphere. Atmospheres containing more than 22.0 percent oxygen by volume distort the UEL by greatly expanding the normal flammable range and promoting very rapid burning. This level, 22.0 percent oxygen by volume, was selected in order to be in agreement with proposed NFPA 306 standards defining oxygen-enriched atmospheres. This is based on a recommendation by the Technical Committee on Gas Hazards of NFPA 306 to the full committee on gas hazards that an upper oxygen limit is needed to address the hazards of hot work in oxygen enriched atmospheres. The Technical committee has recommended an upper oxygen level of 22 percent oxygen by volume. OSHA has elected to adopt this oxygen level of 22.0 percent by volume because instrument error in measurement can result in a variation of ± 1 percent. That is, when the oxygen level in a tank is 21 percent (normal oxygen content of air at sea level), the instrument reading could actually vary from 20 percent to 22 percent. By selecting 22.0 percent oxygen, OSHA insures that a hazardous, oxygen-enriched atmosphere will not exist,

taking into account normal instrument error.

The second criteria is covered in paragraph (a)(2)(ii). This proposed revision requires that the flammable vapors and gases are below 10 percent of the flammable limit prior to hot work. This requirement has been adopted from NFPA 306.

Paragraph (a)(2)(iii) addresses the third criteria which requires that the Marine Chemist or the Coast Guard authorized person ensure that any residues found in the space will not produce an atmosphere at, or above, 10 percent of the lower flammable limit. This provision is also based on existing NFPA 306.

Paragraph (a)(2)(iv) specifies the last requirement before a space may be designated "Safe for Hot Work." This provision would require that adjacent spaces must be cleaned sufficiently to prevent the spread of fire or inerted. This criteria is based on NFPA 306-1988, paragraph 1-6.3(d)3-3.1.4 and is also current industry practice.

Although § 1915.14(a)(2) and its subdivisions are newly included in Subpart B, they do not present new information or requirements. The existing Subpart B, § 1915.14(a), Hot Work, requires NFPA certified Marine Chemists or U.S. Coast Guard authorized persons to ensure that a space is suitable for hot work, indicating that the NFPA definition of "Safe for Fire" (now "Safe for Hot Work") is to be applied. The proposed Subpart B, for clarity and convenience, has incorporated these definitions that were previously only referenced.

Paragraph (a)(3) provides that the term "Not Safe for Hot Work" must be used when any of the four conditions that constitute "Safe for Hot Work" do not exist. This is a new paragraph that supplements the use of the term "Safe for Hot Work" by providing for those times when the four criteria for "Safe for Hot Work" have not been met.

Paragraph (b) covers those areas of the vessel where a competent person can give permission for hot work to proceed following a flammability test. The substantive requirements of this paragraph remain unchanged from the existing requirements.

Paragraph (b)(1) requires that hot work shall not be allowed on the following until a test for flammability has been conducted:

- (1) Dry cargo spaces for which a Marine Chemist's or Coast Guard authorized person's certificate is not required;
- (2) The bilges;

(3) The engine or boiler room where a Marine Chemist's or a Coast Guard's authorized person certificate is not required;

The existing rules, covered in § 1915.14(b) and (c), contain the same requirements found in proposed § 1915.14(b)(1) (i), (ii) and (iii).

Paragraph (b)(2) requires that the spaces discussed in (b)(1) be tested for flammability. This requirement is unchanged from existing § 1915.14(b) and (c).

Paragraph (b)(3) requires that a competent person conduct the flammability test. This requirement is unchanged from that found in existing § 1915.14(b) and (c).

Paragraph (b)(4) prohibits hot work in or on the spaces listed in (b)(1) when the concentration of flammable vapors has been found to be at or greater than 10 percent of the lower flammable limit. This provision is unchanged from the existing standard, § 1915.14(b) and (c).

Paragraph (b)(5) is a new rule which requires employers to label spaces as "Not Safe for Hot Work" if those spaces or adjacent spaces contain atmospheres at or above 10 percent of the lower explosive limit.

Section 1915.15 Maintaining conditions.

Section 1915.15, Maintaining conditions, discusses the steps which must be taken when conditions in tanks are altered after the initial approvals to enter and start work.

Paragraph (a) requires that pipelines be disconnected or blanked off to prevent hazardous substances from entering spaces that have been determined to be "Safe for Workers" or "Safe for Hot Work." This proposed paragraph applies to shipbuilding, shipbreaking and ship repair; the existing paragraph covered only ship repair. Since this situation could occur on any vessel that has carried or contained a flammable or combustible material in bulk, a toxic substance or an asphyxiant, regardless of whether that vessel is being built, repaired or broken, the requirements have been rewritten to cover these conditions.

Paragraph (b) requires that when valves are manipulated or manholes opened, resulting in altered conditions, the spaces must be retested to determine that they continue to meet the requirements in §§ 1915.12, 1915.13 and 1915.14 as applicable. This paragraph covers all shipbuilding, breaking and repairing.

Paragraph (c) requires that before hot work is begun on the weather deck over spaces which do not have to be safe for

hot work, all valves, closures and vents to the weatherdeck shall be closed, except for vented up masts. This requirement is unchanged from the existing requirement, § 1915.14(a)(2), but has been expanded to cover shipbreaking and new construction. This coverage expansion is proposed because vessels and vessel sections, which have contained flammables or combustibles as part of the work process, would present the same hazard during construction and breaking as those under repair if valves were opened to tanks containing an atmosphere having 10% or more of the lower explosive limit and during hot work on the weather deck.

Paragraph (d) requires that a competent person conduct frequent tests of the spaces previously tested by the Marine Chemist or by the Coast Guard authorized person to determine if atmospheric conditions have changed. There are several factors which may influence the frequency with which spaces need to be retested, such as temperature, volatility of the residues, type of work being done in the tank, or trimming in the vessel. The existing rule provides this same requirement in § 1915.15(a)(4), (b)(1) and (b)(2) but limits it to ship repair and shipbreaking. By expanding this requirement to shipbuilding, this rule would require rechecking of any space or tank initially checked by a Marine Chemist or a Coast Guard authorized person. If the tank initially required checking by a competent person, then § 1915.15(f) would apply. Public comment is requested in Issue 10 regarding follow up inspections.

Paragraph (e) directs employers to stop work and get a new Marine Chemist or Coast Guard authorized person certificate if atmospheric conditions on which the initial certificate was based have changed so that they no longer meet OSHA requirements. This rule is unchanged from existing requirements, § 1915.15(a)(4), (b)(1) and (b)(2), except that the proposed paragraph would be expanded to cover shipbuilding. It specifically applies only to those spaces that have required Chemist's or Coast Guard authorized person certificates.

Paragraph (f) directs the competent person to frequently retest the atmospheric conditions that he or she initially determined to be safe for entry, hot or cold work. This requirement to maintain safe atmospheric conditions is unchanged from existing requirements found in § 1915.15(a)(4), (b)(1) and (b)(2). However, it does add new construction to its coverage, but only those spaces

that would require competent person inspection; that is, it would require the competent person to recheck some spaces periodically for oxygen deficient or flammable atmospheres.

In Issue Number 7, public comment is requested regarding a useful definition of the term "frequent."

Paragraph (g) requires the competent person to insure that the atmosphere in the spaces previously tested by that person stays within the acceptable limits of the standard; that is, not above 10 percent LEL and not below 19.5 percent oxygen without respiratory protection. If conditions do not meet these levels, work must be stopped and conditions restored to these levels. This paragraph is the same as found in the existing standards, § 1915.15(a)(4), (b)(1) and (b)(2).

Section 1915.16 Warning signs.

Section 1915.16, Warning signs, discusses warning signs for all vessels during ship building, breaking and repair. The reason for this uniform coverage is that hazardous atmospheres may occur in spaces during any of these activities if flammable or combustible products have been introduced into the cargo containment system or the fuel system.

Paragraph (a) requires that only those spaces which are unsafe be labeled as such. This rule is the same as the existing rules, § 1915.16(a) and (b). Further, Appendix A suggests alternative, equivalent measures, i.e., that employers label the gangways and other means of access to vessels, instead of the individual tanks and spaces, if the entire vessel is in the same condition. This limited alternative method of compliance is the same as existing § 1915.16(c).

Public comment is requested in Issue Number 11 as to whether or not all conditions, safe and unsafe, should be marked on tanks.

Paragraph (b) requires that employers be responsible for employee working and obeying all signs and limitations on tank entry. This provision is unchanged from existing § 1915.15(a)(3).

Appendix A to Subpart B—Explosive and Other Dangerous Atmospheres

This Appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of this subpart. This Appendix neither creates additional obligations nor eliminates obligations otherwise contained in the standard. It is intended to provide explanatory information and educational material to employers and employees to foster

understanding of, and compliance with, the standard.

Appendix B to Subpart B—Explosive and Other Dangerous Atmospheres

This Appendix provides a complete reprint of U.S. Coast Guard regulations referenced in Subpart B for purposes of determining who is a Coast Guard authorized person.

Specific Issues

In addition to any other comments the public wishes to make on this standard, comments are requested on the following specific issues:

1. A definition for inert or inerted atmosphere has been added to the proposed standards in § 1915.11(b). In the first part of the definition, employers are allowed to inert by reducing the oxygen content of the atmosphere to 8.0 percent oxygen or below by volume, or 50 percent the amount required to support combustion, whichever is less.

Comment is requested as to the appropriate oxygen levels for inerting. Comment is also requested as to whether the minimum oxygen for combustion (MOC) figures are readily available to employers, or whether they should be published along with the standard. The maximum permissible oxygen percentage to prevent ignition of flammable gases and vapors using nitrogen and carbon dioxide for inerting can be found in the 14th edition of the Fire Protection Handbook, published by NFPA, as well as in other sources.

2. Section 1915.11(b) requires that the Marine Chemist must carry a valid certificate issued by the National Fire Protection Association (NFPA). At least one commenter has argued that this requirement is too restrictive, and that there are other individuals who are equally capable of performing the tasks assigned the Marine Chemist. Comment is requested regarding OSHA's requirement that all Marine Chemists be NFPA certified. Are there other groups, other than NFPA, who are qualified to assess the qualifications and abilities of a Marine Chemist? Are there additional groups, other than the NFPA, who could provide the training and testing necessary to produce Marine Chemists with a skill level equal to those produced currently by NFPA?

Are there geographical areas of the country that have difficulty getting Marine Chemists? Is work delayed as a result? How often does this situation occur? For how long is the work delayed? Do work backlogs occur because of the unavailability of Marine Chemists? If work is backlogged, for how long is this the case?

Does OSHA's requirement to use an NFPA certified Marine Chemist inhibit, encourage or have no impact on innovation in safe tank entry and work? Please provide supporting documentation for your position.

3. Section 1915.11(b) provides a definition for the phrase "Not Safe for Workers." This phrase is adopted from NFPA 306. The term is used to mean two different things: (1) That a space is not safe to enter under any circumstances; or (2) that employee entry is permitted, but is restricted by the length of time the employee may be exposed, or restricted by the need for respiratory protection or personal protective equipment.

Therefore, a space might be posted "Not Safe for Workers" when in fact it could be safe but with certain restrictions. Comment is requested as to whether or not an additional category of "Safe with Restrictions" should be added and used when entry is permitted but additional protection or constraints are required. This concept is being used by NFPA 306.

4. Sections 1915.12(a)(3), (b)(3) and (c)(3) all require atmospheric testing prior to initial entry into spaces.

OSHA recognizes that confusion exists regarding the use of the term "initial entry." The Coast Guard has interpreted OSHA's use of the term "initial entry" to mean that when more than 24 hours have elapsed since a tank has been determined safe for entry and/or hot work, it must be rechecked to determine if it is still safe for hot work and/or safe for entry.

OSHA has no formal interpretation, explanation or policy statement explaining what constitutes an "initial entry" into a space. Comments are requested regarding the definition of the term "initial entry." Should OSHA set a time limit on "initial entry"? Commenters are urged to review a related issue, frequency of inspection, when drafting responses to this issue.

5. Section 1915.12(c)(2) requires that the toxicity test required prior to entry be conducted by an NFPA certified Marine Chemist, an ABIH industrial hygienist, or a Coast Guard authorized person. In official Agency correspondence, OSHA has said that these persons are what is meant by an NFPA certified Marine Chemist, an industrial hygienist, or an other qualified person. According to official Agency correspondence, this last person is one who can be appointed by the Coast Guard as authorized under 46 CFR 35.01-1(c)(1), 71.60-1(c)(1) or 91.50-1(c)(1), to inspect when a Marine Chemist is not reasonably available. Comment is requested as to who are the appropriate persons to conduct initial

toxicity testing and prescribe any protective equipment or respiratory protection that may be needed. Comments on this matter should provide suitable documentation.

6. Section 1915.12(d) permits emergency work and work of brief duration to be performed in UEL or IDLH atmospheres provided no ignition sources are present and provided the UEL atmosphere is monitored continuously. Comments and additional information are requested on several sections of this paragraph. Should emergency work be defined? If so, what definition should be used? (See, for example, 29 CFR 1915.152(b)(3).) Should a time limit be used to define the term "brief duration"? If so, what should that time limit be and why? Is work ever conducted in UEL atmospheres? How often is this done? What is the nature of the work and what are the restrictions placed upon that activity? Are yards equipped with the meters necessary to determine that they are operating in a UEL atmosphere? How far above the UEL do yards allow work? What are the restrictions placed upon ignition sources in and near UEL atmospheres? How do yards prevent the atmosphere from being diluted and thus entering the flammable range? Should work in UEL atmospheres be prohibited? Why?

7. Proposed §§ 1915.13(b)(4) and 1915.15 address the requirement to conduct atmospheric tests frequently. Section 1915.13(b)(4) would require that factors which could influence the frequency of rechecking, such as air temperature and residue volatility, shall be considered when determining how often to recheck. Paragraphs (d) and (f) of § 1915.15 discuss the need for frequent atmospheric tests in order to maintain the initial working conditions in the tank. OSHA's proposed standards, however, do not specify how frequently a tank should be rechecked. Public comment is solicited as to whether OSHA should specify the frequency of testing in the standard. If so, what should that frequency be and why? Should the factors which influence the need to check tanks frequently be addressed directly in the standard? What factors, in addition to those covered in the Appendix, should be addressed under this subject? Should OSHA change the term "frequently" to "as often as necessary"? If so, why?

8. Should OSHA regulations require that the employer ascertain the last three cargoes carried in tanks covered by this standard? NFPA 306 currently contains such a requirement for Marine Chemists who are testing tanks. Is there a need for OSHA to adopt this requirement?

9. Should OSHA prohibit hot work on bulkheads where insulation has not been stripped away? If so, how much of the insulation shall be removed? Have there been situations where toxic vapors have evolved as a result of heating insulation? Have there been situations where insulation has been heated during hot work and fires have broken out during the hot work or after the hot work had been completed? Please document these occurrences, providing a description of the accidents, the number of times as well as the period of time over which they have occurred. Are there means of performing hot work on insulation which will not create hazards? Please provide supporting data.

10. In § 1915.15(d), should the shipyard competent person be required to conduct a physical examination of the tank and pipelines when making a follow up inspection?

11. Section 1915.16(a) addresses warning signs to be placed on tanks. Should all conditions, safe or unsafe, be marked on tanks? If you support that position please provide both costs and injury data associated with placing signs on safe and unsafe tanks. Should only unsafe conditions be marked? Please provide a rationale for your position.

12. Section 1915.18 addresses the shipyard competent person. Currently OSHA does not require any specific training or certification to assure that individuals designated as a "Competent Person" by their employers are indeed knowledgeable and competent. Yet the responsibilities of these designated individuals impact heavily on safety and health in the shipyard employment workplace.

There have been many suggestions that OSHA establish (or approve) a training program(s) for would-be Shipyard Competent Persons, and after successful completion of that training program, certify (or have certified by some responsible organization or agency) that such individuals are indeed "Shipyard Competent Persons."

OSHA seeks comment on the following specific issues:

A. Should OSHA require certification of Shipyard Competent Persons? If so, what organization(s) should be responsible for certification? If so, what skill level or knowledge requirements should such persons meet? Should they meet additional criteria, above and beyond that required in § 1915.7(b)? What should be the additional criteria? Why?

B. Since it would likely take a period of time before all current Competent Persons could be trained, should OSHA

make this requirement effective some period of time after this revised Subpart B becomes effective? How long should this period be?

C. Should there be periodic recertification to assure that the Certified Shipyard Competent Person has retained his or her skills and knowledge? If not, why not? If so, how often should such recertification be required?

D. How many people would need this certification/recertification? Locally? Regionally? For what geographic area are you providing these numbers?

E. Should such training be mandatory or voluntary? If not, should there be incentives to encourage enrollment? What incentives would be most attractive? Why? If this training were mandatory how much would you estimate it would cost? What would be the benefits associated with such training? Please quantify the benefits associated with such training.

13. Should OSHA require that the atmosphere in tanks or compartments adjacent to ones under inert purge be tested for oxygen deficiency prior to entry?

Should OSHA require that prior to purging, the entire length of the purging line be checked for proper construction, attachment and installation to prevent leaks into compartments not being purged?

Should OSHA require alarms or portable detectors where the integrity of an inert gas purging system cannot be assured?

Have there been accidents as a result of inert gas system leaks? Please provide accident data covering the number of accidents, the period of time over which they occurred and a description of the accidents.

14. OSHA has proposed to eliminate the current recordkeeping requirements that employers designate a competent person on an OSHA Form 73 and then send that form to the closest area office. In its place, OSHA is proposing a requirement that employers shall prepare a certification record consisting of an employer record identifying the competent person(s) or a statement that Marine Chemists are always used, the employer's name, and date of certification. This action reduces the paperwork burden on employers. OSHA proposes to apply this provision to all competent person requirements in Subparts B, C, D and H. Should OSHA take these actions? If so, why?

15. OSHA's existing rule requires that routine work of substantial length (other than inerting) cannot occur in atmospheres less than 16.5 percent oxygen by volume. In such cases,

ventilation is required to bring the oxygen level up to 16.5 percent. With the proposed change, OSHA will now allow routine entry and work in atmospheres with less than 16.5 percent oxygen provided appropriate respiratory protection is worn.

In addition, respiratory protection will now be required for any atmosphere containing oxygen levels between 16.5 percent and 19.5 percent. The existing rule allows unprotected entry between 16.5 percent and 19.5 percent.

OSHA believes that the proposed rule provides the appropriate level of protection to workers while permitting employers the flexibility of choosing the most suitable and economical control measures for each vessel and vessel section being serviced.

OSHA solicits comments on the appropriate control measures to be required in this proposal.

16. In this proposed standard OSHA is recommending that the requirement for the 1970 American Conference of Governmental Industrial Hygienists threshold limit values, which are in the current regulations (§ 1915.5), be replaced with the OSHA permissible exposure limits (PEL's) found in 29 CFR Part 1910, Subpart Z. OSHA acknowledges the current proposal to revise the PEL's for general industry, 53 FR 20960 (June 7, 1988). OSHA plans to carefully study the need to bring the shipyard air containments requirements in line with those proposed for general industry. That action will not be a part of this proposal, but will be considered in the future. Your input is solicited on this matter.

III. References

1. American National Standards Institute/National Fire Protection Association, *NFPA 306 Control of Gas Hazards on Vessels* (1988).
2. Manning, George C., M.S., B.S., *Manual of Ship Construction*, D. Van Nostrand Company, Inc., New York (1942).
3. National Fire Protection Association, *Hazardous Materials*, 6th Edition, 325M-5 (1975).
4. Regulations of the United States Department of Transportation, 46 CFR 35.01-1(c)(1); 71.60-1(c)(1); 91.50-1(c)(1) (1987).
5. Regulations of the United States Department of Transportation, 49 CFR 1.46(t) (1987).

IV. Regulatory Assessment

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in Executive Order 12291, OSHA has determined that the promulgation of this proposed

standard would not be a "major" action because all of its requirements are consistent with current industry practices and are part of existing consensus or OSHA standards. The proposed standard would impose no costs of compliance upon shipyards.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the *Federal Register*.

The economic impact estimates presented in this preamble are estimates based upon the data currently available to OSHA. These estimates will be refined as OSHA receives additional information. Consequently, OSHA solicits further comments on these estimates, and any comments will be addressed and incorporated into the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the April 1986, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing: Subpart B." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed revision of the provisions found in the existing Part 1915 Subpart B that govern work in explosive and other dangerous atmospheres in shipyards. In recent years, shipyards have not prospered as an industry. In 1985, there were about 400 shipyards operating, 200 fewer than the active number of shipyards in 1980. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but only for 10 merchant vessels (140,915 tons) by 1984. Although this loss of business has been partially offset by the increase in the U.S. Navy's demand for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population at Risk

OSHA has estimated that every shipyard employee who works on

vessels and vessel sections will be affected by the provisions in this proposed standard. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 145,000 in 1984. Consequently, because there is the potential for large changes in the demand for ships, OSHA has estimated that the population at risk would be between 145,000 and 180,000 employees.

Risk of Fatality or Injury

OSHA has been unable to estimate the annual number of shipyard fatalities and injuries resulting from accidents associated with explosive or toxic atmospheres because there are no available fatality and injury data. However, OSHA has anecdotal information derived from accident investigations and research concerning fatalities that have occurred in these atmospheres. (Exhibit numbers 1 and 2.)

- The deceased had been one of seven workers from a temporary help service who were removing mud and water (in a "mucking" operation) from the hull of a floating dry dock. Mud and silt were removed from the bottom of the 300-ton U-shaped vessel used to lift ships from the water for repairs. The hull contained several compartments. There was an odor of a flammable substance similar to gas or oil present in the compartment. At some point, an explosion occurred fatally injuring the man and hospitalizing four others. The employer was cited for failure to test the atmosphere for flammable levels and for oxygen deficiency.

- The two deceased men had been employed by a painting and tank cleaning contractor to clean and paint a salt water ballast tank in the bow of a vessel. The tank had been cleaned the day before and the two men had proceeded with the spray painting using methyl ethyl ketone (MEK) as a paint thinner. They completed the first coat. The second day they returned to complete the second coat. Prior to entering the tank no test was performed to determine the lower explosive limit. No mechanical ventilation of any kind was provided to dispel the vapors. After painting for approximately an hour, there was an explosion that killed both men. The source of ignition was believed to be from one of the two hand-held portable lamps.

- One worker was asphyxiated and a second worker was hospitalized when they entered a cargo space that had contained flammable or combustible materials. That space's atmosphere had not been tested by a competent person prior to their entry. In addition, no

competent person had been designated or indicated on an OSHA 73 form, and there was no log of such tests available at the job site.

- In another incident, five employees were hospitalized after they inhaled petroleum product vapors in a confined space on a vessel. The atmosphere in the cargo space had not been tested by a competent person prior to the entry of the employees. In addition, no atmospheric testing was done by a competent person while the men were working in this space.

- In another similar but unrelated incident, five employees were injured when insufficient respiratory protection was provided against the hazards of inhalation of chemical liquids and vapors. These employees had been assigned to do cold work in a tank that had carried a flammable or combustible liquid or gas. The shipyard had neither designated a competent person to test for the presence of flammable vapors, nor provided natural or mechanical ventilation while the employees were in the tank. Furthermore, no rechecking of the tank's atmosphere was performed while the men were in the tank.

- An oxygen-enriched atmosphere was formed when a welding torch gas manifold malfunctioned. This malfunction prevented the flow of gas, but not the flow of oxygen, into a torch being used in a confined space. When the malfunction was rectified and the employee lit his torch, a flash fire occurred due to the oxygen-enriched atmosphere. The employee died in the fire. Had the atmosphere been tested prior to initiating hot work, the accident could have been avoided.

As a result of these and other similar incidents, the known hazardous nature of operations in these types of atmospheres has led OSHA, the National Fire Protection Association (NFPA), and shipyards to establish the specific work practices embodied in the proposed OSHA standard. Further, many shipyards have required their employees to follow these work practices. Where these safe work practices have been adopted, there have been relatively few related injuries and fatalities.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would require the use of existing and readily available technology, equipment, and current work practices.

One source of potential benefits is from the rewriting of the provisions of this subpart to make them clearer and easier to understand. This action will

eliminate some ambiguity concerning the specific provisions with which a shipyard employer must comply.

Another source of potential benefits is that the provisions in the proposed subpart have been designed to be consistent with the requirements of the consensus standards, where appropriate. Many shipyards already comply with the consensus standards such as NFPA 306, because such compliance has been proven to reduce shipyard hazards and resultant fatalities and injuries. It also may be required by insurance companies for property damage insurance. Thus, to the extent that the proposed subpart is more consistent with NFPA standards than the existing OSHA standards, the proposed subpart could reduce the costs of compliance to shipyards while not reducing the level of employee safety.

The basis of the estimated costs of compliance with the proposed standard is the CONRAD report. In order to obtain this information, CONRAD conducted a series of eight focus group meetings, which were attended by individual shipyards, labor groups, safety professionals, and marine chemists. CONRAD circulated copies of the proposed standard and then elicited information concerning any potential economic impacts. The information received by CONRAD was used to develop its estimated costs of compliance. OSHA has adopted that estimate as the best available estimate.

With respect to this proposed standard, CONRAD received no information indicating that shipyards were not in compliance with the proposed provisions. Thus, OSHA has determined that there would be no cost of compliance associated with the proposed standard. Nevertheless, as previously mentioned, this is a Preliminary Regulatory Impact Assessment (PRIA), and OSHA invites public comment concerning this determination. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposed standard would not have a significant impact upon a substantial number of small entities because there would be no costs of compliance. OSHA invites public comment concerning this certification.

The regulatory assessment is available for inspection and copying at the OSHA Technical Data Center, Room

N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in this Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council of Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions to 29 CFR 1915.11-16, Subpart B—Explosive and Other Dangerous Atmospheres, focus on the reduction of accidents or injuries by means of work practices and procedures, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are therefore, categorized as excluded actions according to 29 CFR 11.10 of the DOL NEPA regulations.

VI. Recordkeeping Requirements

This subpart substantially reduces the recordkeeping burden on employers by removing duplicative recordkeeping requirements and replacing a recordkeeping requirement with a certification. Only a requirement for maintaining the OSHA 74, the Log of Inspections and Tests by Competent Persons, has been retained.

The existing Subpart B regulations mandate that a Marine Chemist, when performing atmospheric tests in lieu of a shipyard competent person, must complete two reports on test results: the Marine Chemist's certificate and OSHA's Log of Inspections and Tests (OSHA 74). These two reports contain the same information. The proposed rule eliminates the requirement for completing both forms and instead requires either an OSHA 74 or a Marine Chemist's form.

The requirement that employers complete an OSHA 73, Designation of Competent Persons, and send it into the nearest OSHA area office, has been replaced with a certification requirement. Under this new certification requirement, an employer

must be able to provide evidence substantiating the fact that he has met his legal obligation to designate shipyard competent persons. This certification requirement eliminates the employer's paperwork burden.

Only the paperwork requirement for completing the OSHA 74 has been retained. The OSHA 74, Log of Tests and Inspection by Competent Persons, provides a record of atmospheric tests by location. This information warns employers about hazardous atmospheres and allows employees to determine if atmospheric conditions are changing—an important indicator of developing hazardous conditions. In cases where a Marine Chemist performs this task, he is permitted to substitute his own form which contains the same information as the OSHA 74. By making these changes, OSHA has reduced the paperwork burden on employers while continuing to provide protection for employees.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and the regulations issued pursuant thereto (5 CFR Part 1320) (See 48 FR 13666, March 31, 1983), OSHA certifies that it has submitted the information collection requirements contained in this proposed revision to its current standards to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, 726 Jackson Place NW., Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA Docket Office, as part of the record for this rulemaking.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Officer, Docket No. S-050, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657) and 29 CFR 1911.11, interested parties may file objections to the proposal and request

an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by February 27, 1989.
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

Those of the 25 States with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently four States (Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States: Alaska, Arizona, California,¹

¹ Plan covers only State and local government employees.

Connecticut,¹ Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,¹ North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Cold work, Confined space entry on marine vessels, Flammable atmospheres, Hot work certification, Marine chemist, Marine safety, Marine vessels, Occupational safety and health, Oxygen deficient atmospheres, Safety, Shipyard competent person, Shipyard employment, Toxic atmosphere.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (72 Stat. 835; 33 U.S.C. 941), sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1598; 29 U.S.C. 653, 655, 657), 29 CFR Part 1911 and Secretary of Labor's Order No. 9-83 (48 FR 35736), it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

For the reasons set forth in the preamble, Title 29, Part 1915 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for Part 1915 would be revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 36736), as applicable; 29 CFR Part 1911.

2. Section 1915.7 would be revised to read as follows:

§ 1915.7 Competent person.

(a) *Designation.* (1) For the purposes of Subparts B, C, D and H of this part, except for §§ 1915.35(b)(8) and 1915.36(a)(5), one or more competent persons shall be designated by the

employer in accordance with the applicable requirements of this section, unless the requirements of Subpart B, C, D and H are always carried out by a Marine Chemist or a Coast Guard authorized person.

(2) The employer shall prepare a certification record which includes the employer's name, the identification of the competent person or a statement that a Marine Chemist or a Coast Guard authorized person is being used, and provide the date this record was prepared. The most recent certification record shall be maintained on file.

(b) *Criteria.* Employers must ensure that employees designated as competent persons have the following abilities and attributes:

(1) Ability to understand certificates issued by Marine Chemists or by U.S. Coast Guard authorized persons.

(2) Ability to carry out any written instructions left by Marine Chemists, Certified Industrial Hygienists or by the U.S. Coast Guard authorized persons.

(3) Ability to calibrate, use, and correctly interpret the testing equipment used.

(4) Familiarity with and understanding of Subparts B, C, D and H.

(5) Familiarity with the structure and knowledge of the location and designation of spaces on the types of vessels where work is done.

(6) Capability to perform the tests and inspections required by Subparts B, C, D and H.

(7) Ability to enter the appropriate information in the required logs.

(c) *Logging of inspections and tests.*

(1) When tests and inspections required by any provisions of B, C, D and H of this part, except those referred to in §§ 1915.35(b)(8) and 1915.36(a)(5), are performed by a competent person, Certified Industrial Hygienist, or U.S. Coast Guard authorized person, a record of the locations, operations performed and date, time and results of the test and any instructions resulting therefrom shall be recorded on U.S. Department of Labor Form OSHA 74 "Log of Inspections and Tests by Competent Persons."

(2) Employers shall require Marine Chemists to record test locations and results including time, date and location of vessels inspected, operations performed, as well as any instructions.

(3) A separate OSHA 74 or Marine Chemist's or Coast Guard authorized person's certificate shall be maintained for each vessel and vessel section on which tests and inspections are made.

(4) The OSHA 74 and the records required in paragraph (b) of this section shall be available for inspection in the

immediate vicinity of the affected operations while they are in progress.

(5) The OSHA 74 and the records required in paragraphs (c) (1) and (2) of this section shall be kept on file for a period of at least three months from the date of the completion of the job.

(d) *Application.* The provisions of this section are intended to apply in their entirety to employers engaged in general ship repair, shipbuilding and shipbreaking. They do not apply in their entirety to employers whose work involves only certain portions of Subparts B, C, and D of this part such as:

(1) Repair work on small craft in boat yards where only combustible gas indicator tests are necessary for fuel tank leaks or when using flammable paints below decks;

(2) The building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is necessary; and

(3) The breaking of vessels with no exposure to fuel oil or other flammable hazards.

In such cases, employers are allowed to select their competent person(s) on the basis of the applicable portions of the criteria set forth in paragraph (b) of this section.

3. Subpart B of Part 1915 would be revised to read as follows:

Subpart B—Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

Sec.

1915.11 Scope, application, and definitions applicable to this subpart.

1915.12 Precautions before entering compartments or spaces.

1915.13 Cleaning and other cold work.

1915.14 Hot work.

1915.15 Maintaining conditions.

1915.16 Warning signs.

Appendix A to Subpart B

Appendix B to Subpart B

Subpart B—Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

§ 1915.11 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart sets forth requirements to protect employees during work in explosive and other dangerous atmospheres in, and on, vessels and vessel sections during shipbuilding, ship repairing, and shipbreaking operations.

(b) *Definitions applicable to this subpart.* "Adjacent compartments or spaces" means those compartments or spaces which border upon the space where the work is to be done, and those

which are located on the diagonal from the space where the work is to be done.

"Bulk" means materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count.

"Certified Industrial Hygienist (CIH)" means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

"Coast Guard authorized person" means an individual who meets the requirement of 46 CFR 35.01-1(c)(1) for tank vessels; 46 CFR 71.60-1(c)(1) for passenger vessels; and 46 CFR 91.50-1(c)(1) for cargo and miscellaneous vessels. For tank vessels, passenger vessels, and cargo and miscellaneous vessels in ports or places in the United States or its territories and possessions, the authorized person shall be a Marine Chemist certificated by the National Fire Protection Association; however, if the services of such certified Marine Chemist are not reasonably available, the U.S. Coast Guard, Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. (See Appendix B for a copy of 46 CFR 35.01-1(c)(1); 46 CFR 71.60-1(c)(1); and 46 CFR 91.50-1(c)(1).)

"Competent person" means an individual satisfying the criteria set forth in § 1915.7.

"Hot work" means riveting, welding, burning, the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, sand or shot blasting, or similar spark-producing operations shall be considered hot work except when they are physically isolated from an environment which is greater than 10% of the lower explosive limit. (See Appendix A.)

"Immediately dangerous to life or health (IDLH)" means any atmosphere that poses an immediate threat to life, or which is likely to result in acute or immediate severe health effects.

"Inert or inerted atmosphere" means that (1) the oxygen content of the atmosphere in the space is at or below 8.0 percent by volume or the oxygen content is at or below 50 percent of the amount required to support combustion, whichever is less; or, (2) that the space has been flooded with water; that any hot work is performed at least three feet below the water level; and that the gas content of the atmosphere above the water does not exceed 10 percent of the lower explosive limit.

"Lower explosive limit (LEL)" means the minimum concentration of vapor in

air below which propagation of a flame does not occur in the presence of an ignition source. (See Appendix A.)

"Marine Chemist" means the holder of a valid Marine Chemist certificate issued by the National Fire Protection Association.

"Not Safe for Hot Work" means that no hot work may be performed in compartments or spaces so designated.

"Not Safe for Workers" means that the compartment or space so designated contains less than 19.5 percent oxygen by volume; or that toxic contaminants in the atmosphere are above permissible exposure limits (PEL's) found in Part 1910, Subpart Z of this title for the period of time workers will be exposed; or that residues are capable of producing toxic concentrations above the PEL's under existing atmospheric conditions; or that the concentration of flammable vapors or gases is at or above 10 percent of the lower explosive limit (LEL).

"Oxygen-deficient atmosphere" means an atmosphere having an oxygen concentration of less than 19.5 percent by volume.

"Oxygen-enriched atmosphere" means an atmosphere which contains more than 22.0 percent oxygen by volume.

"Safe for Hot Work" means that the compartment or space so designated has an oxygen content that does not exceed 22.0 percent by volume; and that the concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit; and that the residues are not capable of producing a higher concentration of flammable vapors than permitted under existing atmospheric conditions in the presence of hot work and while maintained as directed; and that all adjacent spaces have been cleaned sufficiently to prevent the spread of fire, or are satisfactorily inerted.

"Safe for Workers" means that the compartment or space so designated has an atmosphere containing at least 19.5 percent oxygen by volume; toxic contaminants in the atmospheres are below the PEL's; the residues in the space are not capable of producing toxic concentrations above the PEL's under existing atmospheric conditions; and the concentration of flammable vapors or gases is below 10 percent of the lower explosive limit (LEL) except as provided by 29 CFR 1915.13(b)(8) for cold work operations.

"Upper explosive limit" (UEL) means the maximum concentration of flammable vapor in air above which propagation of flame does not occur on contact with a source of ignition. (See Appendix A.)

"Vessel section" means a sub-assembly, module, or other component of a vessel being built, repaired or broken.

"Weather deck" means the uppermost continuous deck, exclusive of the forecabin, bridge, or poop, that is exposed to the weather.

§ 1915.12 Precautions before entering compartments or spaces.

(a) *Oxygen deficient atmospheres.* (1) On vessels and sections of vessels, the atmosphere in the following spaces shall be tested prior to initial entry to determine the oxygen content within the compartment or space:

(i) Compartments which have been sealed, such as, but not limited to, spaces which have been coated and closed up, and non-ventilated compartments which have been freshly painted.

(ii) Cargo spaces or other spaces that contain or have contained combustible or flammable liquids and gases in bulk.

(iii) Spaces adjacent to cargo spaces or other spaces that contain or have contained combustible or flammable liquids and gases in bulk.

(iv) Cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids that are toxic, corrosive, or irritant.

(v) Spaces adjacent to cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids that are toxic, corrosive, or irritant.

(vi) Spaces which have been fumigated.

(vii) Spaces adjacent to spaces which have been fumigated.

(viii) Cargo spaces containing cargoes or residues of cargoes which absorb oxygen, such as scrap iron, fresh fruit, molasses, or various vegetable drying oils in bulk.

(2) The test required by paragraph (a)(1) of this section shall be conducted by a competent person.

(3) The test required by paragraph (a)(1) of this section shall be conducted prior to employees' initial entry into the space.

(4) Employees entering a space where the oxygen content is below 19.5 percent by volume shall wear a respirator in accordance with Subpart I of this part. (See Appendix A for information on safe oxygen levels.)

(5) If the space to be entered contains an atmosphere with less than 19.5 percent oxygen by volume, the space shall be labeled "Not Safe for Workers."

(b) *Flammable atmospheres.* (1) On vessels and vessel sections, the atmosphere within cargo spaces or other spaces that contain or have contained

combustible or flammable liquids or cases in bulk, and spaces adjacent to those cargo spaces or other spaces, shall be tested prior to entry to determine the concentration of flammable vapors and gases within the compartment.

(2) The test required by paragraph (b)(1) of this section shall be conducted by a competent person.

(3) The test required by paragraph (b)(1) of this section shall be conducted prior to employees' initial entry into the spaces.

(4) Employees shall not enter spaces where the concentration of flammable vapors or gases is at or above 10 percent of the lower explosive limit (LEL), except as provided in §§ 1915.12(d) and 1915.13(b)(8). (See Appendix A for precautions that should be taken when flammable vapors or gases are below 10 percent of the LEL.)

(5) If the concentration of flammable vapors or gases in the space to be entered is at or above 10 percent of the LEL, the space shall be labeled "Not Safe for Workers," unless the provisions § 1915.12(d) or § 1915.13(b)(8) apply.

(6) When the atmosphere in the space to be entered is found to contain a flammable substance which also has a permissible exposure limit as found in Part 1910 of Subpart Z, the requirements of § 1915.12(c) shall also apply.

(c) *Toxic atmospheres and residues.*
(1) On vessels and vessel sections, the atmosphere and space within cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids that are toxic, corrosive or irritant; spaces which have been fumigated; and spaces adjacent to the above-named spaces shall be:

(i) Tested prior to entry to determine the concentration of toxic atmospheric contaminants within the compartment.

(ii) Visually inspected prior to entry for the presence of toxic, or corrosive residues.

(2) The tests and the visual inspections required by paragraph (c)(1) of this section shall be conducted by a Marine Chemist, a Certified Industrial Hygienist, or a Coast Guard authorized person.

(3) The tests and visual inspection required by paragraph (c)(1) of this section shall be conducted prior to employees' initial entry into the space.

(4) When the tests and/or the visual inspections indicate that the atmosphere or the residues in the space to be entered contain a concentration of contaminants above the level which is immediately dangerous to life or health, the space shall be ventilated before entering to reduce the concentration below the level immediately dangerous

to life and health, except as provided in paragraph (d) of this section.

(5) When the atmosphere or the residues in the space to be entered are found to contain a concentration of toxic contaminants below the level immediately dangerous to life or health but above the permissible exposure limit of Part 1910, Subpart Z, employees shall be protected in accordance with the requirements of 29 CFR Part 1915, Subpart I of this part.

(6) When the atmosphere or the residues in the space to be entered are found to contain or produce a concentration above the permissible exposure limits, the space shall be labeled "Not Safe for Workers."

(d) *Work of brief duration.* In emergencies and in cases of work of brief duration necessary to accomplish the ventilation required or to start operations, work may be performed on vessels or vessel sections in atmospheres containing flammable contaminants which are above the upper explosive limit or otherwise immediately dangerous to life or health provided:

(1) No ignition sources are present; and

(2) The atmosphere in the space is maintained above the upper explosive limit; and

(3) The atmosphere in the space is monitored continuously.

Note: Respiratory protection and other appropriate personal protective equipment and clothing must be provided in accordance with Subpart I of this part. Other provisions for work in IDLH atmospheres are also located in Subpart I of this part.

§ 1915.13 Cleaning and other cold work.

(a) *Locations covered by this section.*

Employees shall not perform manual cleaning and other cold work on vessels and vessel sections in the following locations unless the conditions of paragraph (b) of this section have been met: (1) Spaces containing or having last contained combustible or flammable liquids or gases in bulk;

(2) Spaces containing or having last contained bulk liquids, gases or solids that are toxic, corrosive or irritating;

(3) Spaces which have been fumigated; and

(4) Spaces adjacent to the above named spaces.

(b) *Conditions for cold work.* (1) Liquid residues of flammable, combustible, and toxic materials shall be removed from the spaces as thoroughly as practicable before employees start cold work in these spaces.

(2) If a flammable or combustible material was contained in the space, a

test to determine the concentration of flammable vapors shall be made prior to starting cold work.

(3) The test to determine the concentration of flammable vapors in the atmosphere shall be done by a competent person.

(4) Tests to determine the concentration of flammable vapors shall be conducted frequently during cold work in accordance with temperature, volatility of the residues and other existing conditions in and about the spaces. (See Appendix A for additional information on frequency of testing.)

(5) Hot work shall only be permitted as in § 1915.14.

(6) Spills of flammable, combustible and toxic materials shall be cleaned up as the work progresses.

(7) The concentration of flammable vapors shall be kept lower than 10 percent of the lower explosive limit except as provided in § 1915.12(d) of this part and paragraph (b)(8) of this section.

(8) When highly volatile residues are such that a uniform concentration lower than 10 percent of the lower explosive limit cannot be maintained, then sufficient ventilation shall be provided to keep the concentration of flammable vapors below 10 percent of the lower explosive limit in the major portions of the compartment.

(9) The competent person shall test to determine if exhaust vapors from compartments being ventilated are accumulating in or around the vessel.

(10) When tests required in paragraph (b)(9) of this section indicate that flammable exhaust vapors are accumulating, sources of ignition shall be prohibited in the area of accumulation.

(11) Only lamps which meet the requirements of § 1910.307 of this title shall be used in spaces, on pipelines, on heating coils, on pumps, on fittings or on other accessories that have contained flammable or combustible liquids or gases.

(12) Signs prohibiting smoking and the use of open flames shall be posted on the open deck adjacent to those spaces which have been used to carry flammable or combustible liquids or gases in bulk, adjacent spaces, and pipelines, heating coils, pumps, fittings, or other accessories connected to such tanks.

(13) The metallic parts of air moving devices, including fans, blowers, jet air movers, and all duct work shall be electrically bonded to the vessel's structure.

(14) Fans shall have non-sparking blades.

(15) Portable air ducts shall be of non-sparking materials.

(16) All motors and control equipment shall meet the requirements of § 1910.307 of this title.

(17) All motors and associated control equipment shall be properly maintained and grounded.

Note: Employees shall be protected from exposure to toxic and hazardous substances during cold work in accordance with § 1915.12(c) of this part.

§ 1915.14 Hot work.

(See Appendix A for additional information relevant to performing hot work safely.)

(a) *Marine chemist's inspection required.* (1) Hot work shall not be permitted in or on the following spaces, boundaries or pipelines until tested and certified as "Safe for Hot Work" by a Marine Chemist or a U.S. Coast Guard authorized person.

(i) On tank vessels:

(A) Within or on the boundaries of cargo tanks which contain or have contained combustibles or flammable liquids and gases in bulk, or within spaces adjacent to such cargo tanks;

(B) Within or on the boundaries of fuel tanks which contain or have last contained fuel; and

(C) On pipelines, heating coils, pump fittings or other accessories connected to such cargo or fuel tanks.

(ii) On dry cargo, miscellaneous and passenger vessels:

(A) Within or on the boundaries of cargo tanks which contain or have contained combustible or flammable liquids and gases in bulk;

(B) Within spaces adjacent to cargo tanks which contain or have contained flammable gases, or liquids with a flash point below 150° F., except where the distance between such cargo tanks and the work to be performed is greater than 25 feet;

(C) Within or on the boundaries of fuel tanks which contain or have last contained fuel; and

(D) On pipelines, heating coils, pumps, fittings or other accessories connected to such cargo or fuel tanks.

(2) Hot work within or on the vessel spaces listed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section shall not be permitted unless:

(i) The oxygen content of the atmosphere is less than 22.0 percent by volume. (See Appendix A for more information about oxygen enriched atmospheres.);

(ii) The concentration of flammable materials in the atmosphere is below 10 percent of the lower explosive limit;

(iii) The residues are not capable of producing a concentration of airborne

flammable vapors at, or above, 10 percent of the lower explosive limit under existing atmospheric conditions in the presence of hot work, and while maintained as directed by the Marine Chemist's or the Coast Guard authorized person; and

(iv) All adjacent spaces have been cleaned sufficiently to prevent the spread of fire, or have been inerted.

(3) If any of the conditions in paragraph (a)(2) of this section do not exist, then the space shall be labeled "Not Safe for Hot Work."

(b) *Competent person inspection required.* (1) Hot work shall not be permitted on vessels or vessel sections in or on the following spaces or adjacent spaces until the requirements of paragraphs (b)(2), (b)(3) and (b)(4) of this section have been met:

(i) Dry cargo holds for which a Marine Chemist's or Coast Guard authorized person's certificate is not required.

(ii) The bilges.

(iii) The engine room and boiler spaces where a Marine Chemist's or a Coast Guard authorized person certificate is not required.

(2) A test to determine the concentration of flammable vapors shall be conducted on the spaces listed in paragraph (b)(1) of this section.

(3) The test required by paragraph (b)(2) of this section shall be conducted by a competent person.

(4) Hot work shall not be permitted in or on the spaces in paragraph (b)(1) of this section when the concentration of flammable vapors is equal to or greater than, 10 percent of the lower explosive limit.

(5) If the concentration of flammable vapors or gases is equal to or above 10 percent of the LEL in the space where the hot work is to be done or in the adjacent spaces, the space shall be labeled "Not Safe for Hot Work."

§ 1915.15 Maintaining conditions.

(a) *Prevent hazardous substances from entering spaces.* Pipelines which may convey hazardous substances into the spaces which are "Safe for Workers" or "Safe for Hot Work" shall be disconnected, blanked off, or other positive means shall be used to prevent hazardous substances from entering the space.

(b) *Altering existing conditions.* When hatches, manholes or closures are opened, or any manipulation of valves takes place which alters existing conditions so that they no longer comply with §§ 1915.12, 1915.13 and 1915.14 of this part as applicable, work in the affected spaces or areas shall stop and not resume until the affected areas have been retested and made safe in

accordance with §§ 1915.12, 1915.13 and 1915.14 of this part as applicable.

(c) *Weather deck hot work.* Before hot work is begun on the weather deck over spaces which are not required under § 1915.14 of this part to meet the conditions of "Safe for Hot Work," all valves, closures and vents to the weather deck connecting with tanks or compartments below that contain 10% or more of the lower explosive limit shall be closed, except for those which are vented up masts.

(d) *Frequent tests to maintain Marine Chemist's or Coast Guard authorized person's certificates.* After a Marine Chemist's or Coast Guard authorized person's certificate has been issued, a competent person shall make frequent tests to insure that atmospheric conditions in the spaces for which the certificate has been issued are maintained. (See Appendix A for further information on frequency.)

(e) *Conditions on Marine Chemist's or Coast Guard authorized person's certificate altered.* After a Marine Chemist's or a Coast Guard authorized person's certificate has been issued, and the competent person subsequently finds that atmospheric conditions fail to meet the requirements of §§ 1915.12, 1915.13 and 1915.14 of this part as applicable, work shall be stopped and a new Marine Chemist's or Coast Guard authorized person's certificate in accordance with § 1915.14(a) shall be obtained before work is resumed.

(f) *Frequent tests to maintain competent person's findings.* After a competent person has conducted the tests required in §§ 1915.12, 1915.13, and 1915.14 of this part, the competent person shall make frequent tests to insure that atmospheric conditions are maintained in the spaces initially determined to be safe for entry, hot work or cold work. (See Appendix A for further information.)

(g) *Competent person's findings altered.* After the competent person has initially determined spaces are safe for entry, hot or cold work, and the competent person subsequently finds that atmospheric conditions fail to meet the requirements of §§ 1915.12, 1915.13 and 1915.14 of this part as applicable, work shall be stopped until the conditions in the space comply with §§ 1915.12, 1915.13 and 1915.14 as applicable.

§ 1915.16 Warning signs.

(a) *Label spaces tested.* All tanks, compartments, and other spaces in which the atmosphere has been tested as required by this Subpart but fails to meet the requirements of §§ 1915.12,

1915.13, or 1915.14 as applicable, shall be clearly marked, as set forth in those sections. (See Appendix A.)

(b) *Obey warnings.* The employer is responsible for ensuring that all employees understand and obey all warning signs and limitations stated on the Marine Chemist's certification and on the OSHA Form 74, "Log of Inspections and Tests by Competent Person."

Appendix A to Subpart B—Explosive and Other Dangerous Atmospheres

The following Appendix to Subpart B provides supplementary information to employers and employees to assist them in understanding and complying with the requirements of Subpart B. The Appendix is non-mandatory.

Sections 1915.11–1915.18. These standards are minimum safety standards for entering and working safely in vessel tanks and compartments.

Section 1915.11(b) "Hot work." There are several instances in which circumstances do not necessitate that grinding, drilling, and sand or shot blasting be regarded as hot work. Some examples are:

1. Abrasive blasting of the hull for paint preparation does not necessitate pumping and cleaning the tanks of a tanker vessel.

2. Prior to hot work on many hollow structures, the void space is drilled into to allow a test for an explosive atmosphere. A coolant can be used on the drill bit during drilling.

Section 1915.11(b) "Lower explosive limit." The terms lower flammable limit (LFL) and lower explosive limit (LEL) are used interchangeably in fire science literature.

Section 1915.11(b) "Upper explosive limit." The terms upper flammable limit (UFL) and upper explosive limit (UEL) are used interchangeably in fire science literature.

Section 1915.12(a)(4). After a tank has been properly washed and ventilated, the tank ought to contain 20.8 percent oxygen by volume. This is the same amount found in our normal atmosphere at sea level. However, it is possible that the oxygen content will be lower. When this is the case, the reasons for this deficiency should be determined and corrective action taken.

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than 20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry.

Section 1915.12(b)(4) Flammable atmospheres. Atmospheres with a concentration of flammable vapors at or above 10 percent of the lower explosive limit (LEL) are considered hazardous when located in confined spaces. However, atmospheres with flammable vapors below 10 percent of the LEL are not necessarily safe.

Such atmospheres are too lean to burn. Nevertheless, when a space contains or produces measurable flammable vapors below the 10 percent LEL, it might indicate that flammable vapors are being released or introduced into the space and could present a

hazard in time. Therefore, the cause of the vapors should be investigated and, if possible, eliminated prior to entry.

Some situations that have produced measurable concentrations of flammable vapors that could exceed 10 percent of the LEL in time are:

1. Pipelines that should have been blanked or disconnected have been opened, allowing product into the space.

2. The vessel may have shifted, allowing product not previously cleaned and removed during washing to move into other areas of the vessel.

3. Residues may be producing the atmosphere by releasing flammable vapor.

Section 1915.12(b)(6) Flammable atmospheres which are toxic. In addition, an atmosphere with a measurable concentration of a flammable substance below 10 percent of the LEL may be above the permissible exposure limit for that substance. Refer to § 1915.12(c) (4) and (5) if that is the case.

Section 1915.13(b)(4), § 1915.15(d) and § 1915.15(f). The frequency with which a tank is monitored to determine if atmospheric conditions are being maintained should be a function of several factors that are discussed below:

1. *Temperature.* Higher temperatures will cause a combustible or flammable liquid to vaporize at a faster rate than lower temperatures. This is important since hotter days may cause tank residues to produce more vapors and that may result in the vapors exceeding 10 percent of the LEL or an overexposure to toxic contaminants.

2. *Work in the tank.* Any activity in the tank could change the atmospheric conditions in that tank. Oxygen from a leaking oxyfuel hose or torch could result in an oxygen enriched atmosphere that would more easily propagate a flame. Some welding operations use inert gas, and leaks can result in an oxygen deficient atmosphere. Manual tank cleaning with high pressure spray devices can stir up residues and result in exposures to toxic contaminants. Simple cleaning or mucking out, where employees walk through and shovel residues and sludge, can create a change in atmospheric conditions.

3. *Period of time elapsed.* If a period of time has elapsed since a Marine Chemist or Coast Guard authorized person has certified a tank as safe, the atmospheric condition should be rechecked by the competent person prior to entry and starting work.

4. *Unattended tanks.* When a tank has been tested and declared safe, then subsequently left unattended for a period of time, it should be retested prior to entry and starting work. For example, when barges are left unattended at night, unidentified products from another barge are sometimes dumped into their empty tanks. Since this would result in a changed atmosphere, the tanks should be retested prior to entry and starting work.

5. *Work break.* When workers take a break or leave at the end of the shift, equipment sometimes is inadvertently left in the tanks. At lunch or work breaks and at the end of the shift are the times when it is most likely someone will leave a burning or cutting torch in the tank, perhaps turned on and leaking oxygen or an inert gas. Since the former can

produce an oxygen enriched atmosphere, and the latter an oxygen deficient atmosphere, tanks should be checked for equipment left behind, and atmospheres monitored if necessary prior to entering and starting work. In an oxygen enriched atmosphere, the flammable range is severely broadened. This means that an oxygen enriched atmosphere can promote very rapid burning.

6. *Ballasting or trimming.* Changing the position of the ballast, or trimming, or in any way moving the vessel so as to expose cargo that had been previously trapped, can produce a change in the atmosphere of the tank. The atmosphere should be retested after any such move and prior to entry or work.

Section 1915.14 (a) and (b) Hot work. This is a reminder that other sections of the OSHA shipyard safety and health standards in Part 1915 should be reviewed prior to starting any hot work. Most notably, Subpart D, Welding, Cutting and Heating, places additional restrictions on hot work: The requirements of §§ 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of § 1915.54 must be met before welding, cutting or heating is begun on any structural voids.

Section 1915.14(a)(2)(i). During hot work, more than 20.8 percent oxygen by volume can be unsafe since it expands the normal flammable range. The standard permits the oxygen level to reach 22 percent by volume in order to account for instrument error. However, the cause of excess oxygen should be investigated and the source removed.

Section 1915.16(a). If the entire vessel has been found to be in the same condition, then employers shall be considered to be in compliance with this requirement when signs using appropriate warning language in accordance with § 1915.16(a) are posted at the gangway and at all other means of access to the vessel.

Appendix B to Subpart B—Explosive and Other Dangerous Atmospheres in Vessels and Vessel Sections

Appendix B provides a reprint of the Code of Federal Regulations' paragraphs referenced in Subpart B.

(1) 46 CFR 35.01–1(c)(1) covering tank vessels reads as follows:

In ports or places in the United States or its territories and possessions, the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certificated marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicates that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certificated marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain,

insofar as can reasonably be done, the safe conditions in the spaces certified, throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) 46 CFR 71.60-1(c)(1) covering passenger vessels reads as follows:

In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(3) 46 CFR 91.50-1(c)(1) covering cargo and miscellaneous vessels as follows:

In ports or places in the United States or its territories and possessions the inspection shall be made by a Marine Chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection. If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started. Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required. Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

[FR Doc. 88-27004 Filed 11-29-88; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. S-043]

29 CFR Part 1915

Welding, Cutting, and Heating in Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing welding, cutting, and heating. The standards proposed for revision regulate the design, availability, and use of welding, cutting, and heating equipment as well as safe work practices to be employed when such equipment is utilized in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard welding, cutting, and heating standards and the appropriate general industry welding, cutting, and heating standards into a single, comprehensive subpart of Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address the hazards of welding, cutting, and heating operations as a part of vessel construction, as well as general maintenance around the shipyard facility.

The specific topic of welding, cutting, and heating is currently addressed in Subpart D of the current Shipyard Employment Standards. This proposal would reorganize the rules into a more logical grouping of topics, reduce the number of sections from seven to five, and continue to locate the welding, cutting, and heating sections in Subpart D.

DATES: Comments on this proposed

rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-043, U.S. Department of Labor, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Michael B. Moore, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration.

I. Background

In May 1971, the Occupational Safety and Health Administration (OSHA) under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered in Part 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of the general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard employment which were not specifically addressed in the consolidated Part 1915 (See 29 CFR 1910.5(c)).

In 1982, the Shipbuilders Council of America and the American Waterways

Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA will propose to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these Parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements, where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revisions of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards, so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions addressed in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of the proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to welding, cutting, and heating in shipyards. Briefly, OSHA would revise the authority citation of Part 1915 to reflect the current authority for this proposed rulemaking, and OSHA proposes to revise the existing Subpart D of Part 1915 in its entirety as set forth below.

OSHA wishes to raise an issue involving the cost of several new proposals in this document that are based upon ANSI Z49.1-1983. OSHA believes that these new proposals recognize current industry practice and that the proposals would have little economic impact on the overall cost of compliance. Comments supporting or rejecting this position are requested. If the commenter believes that the adoption of the ANSI provisions would impose a significant cost of compliance then supporting data and information should be included with the comment.

Section 1915.51 Scope, application, and definitions applicable to this subpart.

Paragraph (a)—Scope and application. In paragraph (a) of this proposal, OSHA sets forth the scope and application of Subpart D of Part 1915. Paragraph (a)(1) of the proposal would set forth the scope of Subpart D to include all welding, cutting and heating operations (hot work) and equipment in shipyard workplaces and operations including shipbuilding, ship repairing, and shipbreaking, except for construction work regulated by 29 CFR Part 1926.

Paragraph (a)(2) of the proposal would revise the existing language in § 1915.2(a) to reflect the incorporation of relevant provisions from Subpart Q of Part 1910, and to indicate that the general industry welding, cutting, and heating regulations in that Subpart Q would no longer apply to shipyard workplaces and operations.

Paragraph (a)(3) is a new paragraph that specifically addresses the scope of § 1915.53. It is proposed that § 1915.53 would not cover the design and construction or installation of bulk gas supply or piping distribution systems with a storage capacity greater than 20,000 cubic feet. Currently, the OSHA general industry welding standards require bulk oxygen systems with a storage capacity of 13,000 cubic feet of oxygen connected or ready for service, or more than 25,000 cubic feet including unconnected reserves on hand at the site, be in compliance with the 1965 NFPA Standard for Bulk Oxygen Systems at Consumer Sites, No. 566-1965. Because experience and research has not revealed any bulk oxygen systems in use by shipyards, OSHA believes it is unnecessary to retain in the shipyard standards the requirement that such systems comply with the NFPA standards. OSHA requests information whether such systems exist in or are currently planned for, shipyards and whether a requirement to comply with the latest NFPA bulk oxygen system consensus standard (NFPA 50-1985) should be included in the shipyard rules.

Paragraph (b)—Definitions. In paragraph (b), OSHA is proposing to define two terms used in the proposed standards. New definitions are proposed for "Immediately dangerous to life or health (IDLH)," and "Immediate severe health effects." These terms are new to Subpart D and are taken from definitions being developed in other OSHA standards in order to assure consistency. Other definitions applicable to this Subpart are still in § 1915.4 of Subpart A.

Section 1915.52 General requirements.

Paragraph (a)—Equipment. In paragraph (a)(1) through (a)(3), OSHA would address the use of welding, cutting, and heating equipment. Paragraph (a)(1) would require that equipment be used for the purpose for which it is designed and that it be kept in good working condition. The proposed language is derived from the existing language of § 1910.252 (a)(1)(i) through (a)(1)(iii), and is written in more performance-oriented language. OSHA intends that all equipment be acceptable

for its intended use and that it be kept in good working condition. Such language, clearly indicating OSHA's intent, would eliminate the need for specifically addressing each individual piece of equipment as is done in existing § 1910.252(a).

In paragraph (a)(2), OSHA proposes that all equipment be inspected at the beginning of each shift and periodically thereafter to assure that it is in good working condition. The proposed language utilizes the existing language of § 1915.55 (f)(3), (g)(2), and (h), and § 1915.56(d)(4), and is intended to cover all welding equipment in the shipyard. The proposed language would help eliminate injuries related to the use of improperly installed or faulty equipment.

In paragraph (a)(3), OSHA proposes a new provision that would mandate the tagging and removal of defective equipment from the workplace. Although, existing shipyard welding regulations require the removal of defective equipment, or prohibit its use (see, e.g., § 1915.55 (c)(3) [cylinders], (f)(3) [hoses], (g)(1) [torches]; § 1915.56 (b)(4) [cables]), the current rules do not address the tagging of such equipment. OSHA would require the removal of all defective equipment in order to prevent the use of such equipment, and would propose, in addition, that such equipment be tagged in accordance with the general industry accident prevention tags standard, 29 CFR 1910.145(f), in order to identify the defective equipment to anyone who may be unaware of the equipment's condition. The proposal would require the tag to signal "DANGER" and to impart a message of the specific hazard or of instructions to be followed, such as, the words "DO NOT USE." This proposal would address the hazardous situation when, for example, a defective air wrench is returned to the equipment room without a tag and placed on the shelf only to be reissued to another employee who is unaware of the defect. The proposed tag requirement would require the equipment be identified as defective and would eliminate the possibility of reissue and subsequent injury.

OSHA invites comments on whether defective equipment that has been removed from the work area and placed in an area so that the equipment may be discarded or disposed of should be tagged.

Paragraph (b)—Engineering controls, work practices, and personal protective equipment (PPE). In paragraph (b) it is proposed that anyone performing hot work be protected against potential chemical or physical hazards. Physical hazards can include those associated

with the generated sparks and heat and with electrical shock. The chemical hazards posed by welding fumes and gases are dependent upon a number of factors including: The metal being worked; the process and consumables being used; coatings on the work such as paint, galvanizing, or plating; and contaminants in the atmosphere such as halogenated hydrocarbon vapors from cleaning and degreasing activities. In addition, the composition of the fumes is usually different from the composition of the electrode or consumables. Reasonable expected fume products of normal operation include those originating from volatilization, reaction, or oxidation of consumables, base metals and coating, and the atmospheric contaminants noted. Reasonably expected gaseous products include carbon monoxide, carbon dioxide, fluorides, nitrogen oxides, and ozone. See ANSI/ASC Z49.1-1983, *Safety in Welding and Cutting*.

Paragraph (b)(1) would provide that toxic and hazardous substances regulated by OSHA in 29 CFR Part 1910, Subpart Z are to be controlled in accordance with those provisions, unless otherwise specified in paragraph (h) of the proposed rules addressing work in confined spaces.

OSHA is also inviting comment on whether the agency should consider adopting for shipyard welding operations the permissible exposure limits proposed on June 7, 1988 (53 FR 20960), for general industry (including welding operations in general industry). OSHA is not proposing new limits at this time but is considering such action in the near future.

In paragraph (b)(2), OSHA would require that contaminated air be exhausted clear of all sources of intake air. The proposed language is a restatement of existing § 1915.51(b)(1)(iv).

In paragraph (b)(3), OSHA proposes a general performance-oriented provision requiring that appropriate personal protective equipment be provided and used in accordance with Subpart I of the shipyard standards. Where necessary and appropriate, careful selection of personal protective equipment must protect employees from the various health and physical hazards associated with hot work, including those to the respiratory system, skin, eyes, face, hands, feet, head, body and hearing. The proposed provision does not list specific protective equipment as do the existing standards in § 1915.51 (e)(1), (f)(2); §§ 1915.56(e) and 1910.252 (e)(2) and (e)(3).

In paragraph (b)(4), OSHA is proposing a provision to protect

employees who are welding, cutting or heating, or assisting in such work from thermal or radiation burns by requiring the employer to provide appropriate protective clothing or equipment such as shields or curtains.

In paragraph (b)(5), OSHA would require that no gas or mixture of gases, other than air, be used for ventilation, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area. The proposed language would specifically prohibit the use of oxygen. Oxygen is especially hazardous when used for such purposes. Although oxygen itself is not flammable, oxygen's presence will drastically accelerate the speed with which burning takes place. In addition, oil or grease may ignite spontaneously in the presence of pure oxygen. The paragraph would also limit the discharge pressure of air used for cleaning the workplace to 30 psi (207 kPa). High pressure air jets can penetrate an employee's skin and introduce air into the blood stream. The proposed language is a combined restatement of §§ 1910.242(b) and 1915.51(b)(1)(vi).

Paragraph (c)—Fire protection. In paragraph (c), OSHA would address work practices that reduce ignition sources and, correspondingly, the potential for fire and explosion during hot work operations. The proposed language is derived for the most part from §§ 1915.52 (a) and (b), 1915.53(e), and 1910.252(d).

The National Fire Protection Association (NFPA) provides some insight on the fire hazards during welding and cutting in their standard NFPA 51B-1984, *Standard for Fire Prevention in Use of Cutting and Welding Processes* (Ref. 2). Part of that explanation follows:

1-1 Introduction.

1-1.2 * * * many fires * * * have been caused by cutting and welding, primarily with portable equipment in areas not specifically designed or approved for such work. Cutting and certain arc welding operations produce literally thousands of ignition sources in the form of sparks and hot slag. The electric arc or the oxyfuel gas flame and the hot work pieces are also inherent ignition sources.

1-1.3 A majority of fires in which cutting and welding is a factor have been caused by sparks. These globules of molten metal have scattered horizontally as far as 35 feet (11 m), setting fire to all kinds of combustible materials. They have also fallen through cracks, pipe holes or other small openings in floors and partitions starting fires which have reached serious proportions before being noticed.

1-1.4 Electric arcs or oxyfuel gas flames, in themselves, have rarely caused fire except where they have overheated combustibles in the vicinity of the work or where they have

been used on containers that have held combustibles and that have not been cleaned and purged. In the latter case, an explosion generally resulted.

1-1.5 The heat of the metal being welded or cut has caused fires where the hot pieces were permitted to rest or fall upon combustible materials. Fires and explosions have also been caused where this heat was transmitted, as in the case of a container, through the metal to a flammable atmosphere or to combustibles within the container.

1-1.6 Anything which is combustible or flammable is susceptible to ignition by the cutting and welding. The most common materials likely to become involved in fire are combustible building construction such as floors, partitions, and roofs; combustible contents such as wood, paper, textiles, plastics, chemicals, and flammable liquids and gases; and combustible ground cover such as grass and brush.

1-1.7 Preventing cutting and welding fires can best be achieved by separating the combustibles from ignition sources or by shielding the combustibles. [Chapter 1, NFPA 51B-1984]

In paragraph (c)(1), OSHA proposes to require that objects to be welded, cut, or heated be moved to a designated safe location whenever practicable. The proposed language is a restatement of requirements in existing §§ 1915.52(a)(1) and 1910.252(d)(2)(xv).

In paragraph (c)(2), OSHA proposes to require that all movable fire hazards be removed from work areas where the object to be worked upon cannot be moved. This is a restatement of requirements in paragraphs §§ 1915.52(a)(1) and 1910.252 (d)(1) and (d)(2).

In paragraph (c)(3), OSHA proposes to require the use of positive means to protect immovable fire hazards, and nearby employees performing other tasks, from heat, sparks, and slag. This is a restatement of paragraph § 1915.52(a)(2).

In paragraph (c)(4), OSHA proposes to require equivalent fire precautions to be taken in compartments adjacent to compartments where hot-work is being performed. This is a restatement of existing paragraph § 1915.52(a)(3) with some editorial amendments to provide performance language.

In paragraph (c)(5), OSHA proposes to require that openings in floors, decks, walls and bulkheads be covered or closed to prevent the passage of hot slag. This is a restatement of existing paragraph § 1910.252(d)(2)(i) with editorial revision.

In paragraph (c)(6), OSHA would require that fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, be provided and kept readily available in the work area. It would also prohibit the use of vaporizing liquid type extinguishers in

confined spaces. This is a restatement of paragraph § 1915.52 (b)(2) and (b)(4).

In paragraph (c)(7), OSHA would require a fire safety inspection and authorization to begin hot work to be completed by a competent person as applicable, prior to beginning hot work in locations not designed for such purposes. This is a combined restatement of paragraph § 1910.252 (d)(2)(xiii)(b) and (d)(2)(vi). These standards require that employers designate an individual responsible for authorizing cutting and welding operations in areas not specifically designed for such processes and that these individuals inspect such areas before welding and cutting is permitted. The proposed provision maintains these requirements but reflects the fact that competent persons are the "individuals responsible" for performing such duties in shipyards. Inspections prior to beginning hot work on vessels and vessel sections are covered by Subpart B of the Shipyard Standards.

In paragraph (c)(8), OSHA would require the use of trained fire watches under certain workplace conditions. The language is a rewrite of the existing language in paragraphs §§ 1910.252(d)(2)(iii) and 1915.52(b)(3). Although the OSHA general industry welding standard, ANSI Z49.1-1983 (paragraph 6.4.3), and NFPA 51B-1984 (paragraphs 3-3.4 and 2-3.8), require fire watches to last at least one half hour after completion of hot work, the current shipyard welding standard, as well as the proposal, do not specify a minimum length of time. Public comment is requested whether OSHA should specify a minimum length of time the fire watch should last after completion of the hot work.

In paragraphs (c)(9), OSHA would prohibit hot work in flammable or explosive atmospheres except as permitted in paragraph (h) of this section. This is a combined rewrite of paragraphs §§ 1915.52(b)(1) and 1910.252(d)(2)(vi)(c).

Paragraph (d)—Work with preservative coatings. Paragraph (d) would address safe work practices in areas where hot work is done on surfaces protected by preservative coatings. The proposed language is taken from paragraph § 1915.53 (b), (c), (d), (e), and (f).

In paragraph (d)(1), OSHA proposes to require that a competent person test a coating's flammability before a coated surface is subjected to welding, cutting, or heating. OSHA would also require the stripping of preservative coatings from such surfaces when such tests cannot be conducted. The first sentence of the proposal is a restatement of § 1915.53(b).

The second sentence is proposed to permit work to continue safely, with some limitations, when tests are impractical or cannot be conducted due to time constraints. Public comment is requested on whether OSHA should designate a minimum distance that the flammable coating needs to be stripped from the point of heat application.

In paragraph (d)(2), OSHA would require that coatings be stripped prior to hot work when tests indicate they are highly flammable. Preservative coatings are considered highly flammable when scrapings burn with extreme rapidity. This is a partial restatement of paragraph § 1915.53(c).

In paragraph (d)(3), OSHA proposes to address the hazards posed by performing hot work on toxic preservative coatings in enclosed spaces. In such areas, an employer must either strip the toxic coating far enough away from the area of heat application to prevent employee exposure to toxic vapor or protect employees with acceptable respiratory equipment. This is a partial restatement of the requirement in § 1915.53(d) (1) and (2). OSHA also invites public comment on whether OSHA should designate a minimum distance that the flammable coating needs to be stripped from the point of heat application.

Paragraph (d)(4) addresses the hazards posed by doing hot work on metals covered by soft and greasy preservative coatings.

In paragraph (d)(4)(i), OSHA would require that a competent person test the space's atmosphere prior to beginning hot work to ensure that an explosive environment does not exist. If the atmosphere is explosive, no hot work shall begin until the environment is made safe. This is a restatement of the requirements in paragraph § 1915.53(e)(1).

In paragraph (d)(4)(ii), OSHA proposes to require that soft and greasy preservative coatings be removed a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not be appreciably raised. This is a restatement of the mandatory language in paragraph § 1915.53(e)(2). OSHA further proposes to prevent the use of flame or heat to remove soft and greasy preservative coatings. This is a restatement of paragraph § 1915.34(b)(2).

In paragraph (d)(4)(iii), OSHA proposes to require tests for flammable vapors by competent persons immediately after hot work begins, and at frequent intervals thereafter to ensure that no such vapors exist. This is a restatement of the existing requirements

in § 1915.53(f). If such vapors are found, OSHA would continue to require that all work stop immediately and remain stopped until the environment has been made safe and shall not be resumed until such additional precautions have been taken as are necessary to ensure that the operation can be resumed safely.

Paragraph (e)—Work in and on hollow metal spaces, containers and structures not covered by § 1915.12. In paragraph (e), OSHA proposes to address hot work in hollow metal containers, structures, and similar enclosed spaces not covered in § 1915.12. The proposed language is taken for the most part from paragraph § 1915.54 (a), (b), (c), (d), and (e).

In paragraph (e)(1), OSHA proposes to require that hollow or jacketed structures that have contained flammable substances be either filled with water or thoroughly cleaned of the flammable substance and then tested for residues that may produce flammable vapors before hot work is authorized. This is a restatement of paragraph § 1915.54(a). OSHA also proposes to require that if water is used to inert the hollow or jacketed structure the water levels must be maintained at the full level during the work process to assure that no air space can occur that could result in an explosion due to flammable vapor accumulation. Any pipe lines or connection to these hollow structures would have to be disconnected or blanked. This is a current requirement contained in paragraph § 1910.252(d)(3)(i).

In paragraph (e)(2), OSHA proposes to require inspections and, if necessary, testing of structural voids by a competent person to determine the presence of flammable liquids or vapors. If flammable liquids or vapors are present, the void would have to be made safe prior to hot work. The proposed language is a restatement of paragraph § 1915.54(c).

In paragraph (e)(3), OSHA would require that hollow or jacketed structures be vented or opened to permit the release of pressure that may build up during hot operations. This is a combined restatement of existing paragraph § 1915.54 (b), (d), and (e). The language is also similar to paragraph § 1910.252(d)(3)(ii).

Paragraph (f)—Work with fissionable materials. In paragraph (f), OSHA proposes to regulate hot work activities involving the use of, or exposure to, sources of ionizing radiation and activities involving the use of radioactive materials. The proposed language in paragraphs (f)(1) and (f)(2) is

a restatement of the existing language in paragraph § 1915.57 (a) and (b).

Paragraph (g)—Work with metals of toxic significance. In paragraph (g), OSHA would address hot work operations on metals that are normally used during such operations and that can produce toxic vapors or fumes upon the application of heat. These metals are zinc, lead, cadmium, chromium, mercury, and beryllium. OSHA believes that particular attention must be paid to the hazards associated with these metals during work with such metals.

In paragraph (g)(1), OSHA would require meeting the proposed requirements of paragraph (b) of this section when hot work is performed on any metal that may generate a toxic substance exposure to employees upon the application of heat. The proposed language is a revision of paragraph §§ 1915.51(d)(1) and 1910.252(f)(2) so that it is consistent with OSHA's current policy on the use of feasible engineering controls and administrative practices to achieve compliance with permissible exposure limits and to use respirators if such controls are not feasible to achieve full compliance.

In paragraph (g)(2), OSHA proposes to require the removal of residues or cargoes of metallic ores of toxic significance from areas where hot work is to take place. This language is a restatement of paragraph § 1915.51(g)(1).

Paragraph (h)—Work in confined spaces. In paragraph (h), OSHA proposes to address the hazards of hot work operations in confined spaces. Hot work in confined spaces requires special precautions because the poor ventilation and restricted access in such spaces often lead to hazards associated with the accumulation of toxic or flammable gases and vapors, or unsafe levels of oxygen.

In paragraph (h)(1), OSHA proposes to require the protection of all employees, not just the welder, in the confined space from the hazards associated with inadequate ventilation such as, but not limited to, heat stress and exposure to toxic substances. The proposed language is a rewrite of the existing language in § 1910.252(f)(4)(i). This duty is also similar to that generally required in § 1915.51(c)(1).

In paragraph (h)(2), OSHA is proposing that in confined spaces with atmospheres immediately dangerous to life or health (IDLH) only positive pressure, self-contained breathing apparatus or airline respirators approved by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) shall be used. The proposed language updates

the current language in § 1910.252(f)(4)(iii) to reflect the transfer of respirator approval functions from the U.S. Bureau of Mines to MSHA and NIOSH. The proposed language is similar to the existing language of § 1915.152(a).

In paragraph (h)(3), OSHA would require that all cylinders, except small portable hand-held types, and all welding power sources be located outside of confined spaces. The proposed language is a restatement of paragraph § 1910.252(e)(4)(iii), except for the exemption pertaining to small portable hand-held types of cylinders. The exception is proposed to permit the use of the hand-held units because the smaller units are typically used for short-term soldering work or similar operations, rather than for the long-term structural work. The quantity of gas present, normally bottled propane, is significantly less than that found in the larger oxygen or fuel-gas cylinders and poses far less of a threat to employees than the larger cylinders.

In paragraph (h)(4), OSHA proposes to require that employees be made aware of any respiratory hazards that may exist in any confined space adjacent to spaces where hot work is being performed. Hot work operations on surfaces common to two adjacent spaces may create respiratory hazards in either space. The purpose of this standard is to assure employee safety during entry into confined spaces adjacent to compartments where hot work is being performed. The proposed language is new and was taken from paragraph 7.3 of ANSI Z49.1-1983.

In paragraph (h)(5), OSHA proposes to require frequent checks of employees working alone in confined spaces to ensure their safety. This is a new requirement and it is intended to provide coverage of a gap in protection afforded by existing standards. In addition, OSHA invites comment on the appropriateness of using the term "frequent." Basically, how frequent is "frequent"?

In paragraph (h)(6), OSHA would require an outside helper for confined space work there breathing apparatus is provided to the employee working in the confined space. This is a restatement of § 1910.252(f)(4)(iv).

In paragraph (h)(7), OSHA would require that approved respirators be available and ready for use by attendants stationed outside of confined spaces with atmospheres that are immediately dangerous to life or health. The proposed language is a combined restatement of paragraph § 1910.252(f)(4)

(i), (ii), and (iii) combined with paragraph 7.5.1 of ANSI Z49.1-1983.

In paragraph (h)(8), OSHA would require that fuel gas and oxygen supplies to torches left in confined spaces be shut off when the torch is not used by the welder or cutter for a period of time, such as during work breaks and lunch hours. It also would require the removal of torches and hoses from the confined space when the equipment will not be used for a substantial period of time, such as overnight or when the welder or cutter is temporarily assigned another job and leaves the work area; or the equipment is to be left behind for other workers during a change of shift. The proposed language is a restatement of paragraph § 1910.252(e)(4)(vi) and is similar to the requirement in paragraph § 1915.52(a)(4).

Section 1915.53 Oxyfuel gas welding and cutting.

This section would cover safe practices during welding, cutting, and heating operations using a mixture of oxygen and fuel-gas to generate heat. Various fuel gases, such as acetylene, propane and natural gas may be used depending upon the employer's need or preference. Under this proposal, employers and employees would also have to comply with § 1915.52—*General requirements*.

Paragraph (a)—Oxygen use. In paragraph (a)(1), OSHA proposes to require that certain components of oxyfuel gas equipment be kept free of oil and greasy substances. In the presence of oxygen, oil or grease may ignite spontaneously and burn violently. The proposed language is a restatement of paragraph § 1910.252 (a)(2)(iv)(a) and (a)(2)(v)(a).

In paragraph (a)(2), OSHA would prohibit the application of jets of oxygen on oily surfaces, greasy clothing or into fuel oil or other similar storage tanks. Such applications could cause a spontaneous fire or explosion. The proposed language is a restatement of paragraph § 1910.252(a)(2)(v)(a).

In paragraph (a)(3), OSHA proposes to prohibit the interchanging of oxygen equipment and apparatus with equipment used for other gases. The proposed language is a restatement of paragraph § 1915.55(e)(3).

Paragraph (b)—Attachments for gas mixing. In paragraph (b), OSHA proposes to limit the types of devices permitted for mixing gases prior to consumption at burners or torches. The proposed regulation is a restatement of paragraph § 1910.252(a)(1)(i) and is similar to the requirements of § 1915.55(c)(2).

Paragraph (c)—Torches. In paragraph (c)(1), OSHA proposes to require that connections in fuel and oxygen lines and components be checked and assured to be gas tight prior to igniting the torch. The proposed language is a restatement of paragraph § 1915.55(g)(2). In addition, a specific prohibition against using a flame to check for gas leaks has been proposed. Paragraph 10.5.2.1 of ANSI Z49.1-1983 also prohibits testing for leaks with flame.

In paragraph (c)(2), OSHA would require that torch heads be kept clean and free from obstruction. The proposed language is a restatement of paragraph § 1915.55(g)(1).

In paragraph (c)(3), OSHA would require that hoses be purged prior to lighting them the first time each day. This is a new requirement intended to assure that gas or solid contamination is not present in the hose lines. The proposed language has been taken from paragraph 10.5.2.2 of ANSI Z49.1-1983.

In paragraph (c)(4), OSHA proposes to prohibit the purging of hose lines inside of confined spaces or near ignition sources. This would be a new requirement, and is based upon paragraph 10.5.2.2 of ANSI Z49.1-1983. The proposal is made to assure that flammable vapor-air mixtures are not introduced into the confined spaces or near ignition sources.

In paragraph (c)(5), OSHA proposes to prohibit the use of sources of ignition such as matches, cigarette lighters, or hot work to ignite torches. The proposal is a restatement of paragraph § 1915.55(g)(3).

Paragraph (d)—Hose and hose connections. In paragraph (d)(1), OSHA would require that hoses be easily distinguishable from each other in order to prevent their intermixing. The proposal is a restatement, in part, of paragraph § 1915.55(f)(1). As with the current standard, no specific manner of distinguishing the hoses would be required.

In paragraph (d)(2), OSHA would prohibit the interchange of oxygen and fuel gas hoses. This is a restatement, in part, of paragraph § 1915.55(f)(1).

In paragraph (d)(3), OSHA proposes to prohibit the use of single hose for transport of more than one type of gas unless the hose has passageways for each type of gas separated by a wall that will not fail and allow the gases to mix. This proposal is also a restatement, in part, of paragraph § 1915.55(f)(1).

In paragraph (d)(4), OSHA would prohibit the taping of parallel sections of oxygen and fuel gas hoses together for the purpose of convenience in such a way as to obscure tears, cuts, abrasions and other such physical defects that

may cause the hose to fail. This proposal is a restatement of paragraph § 1915.55(f)(2) but deletes the specific criteria in favor of performance language.

In paragraph (d)(5), OSHA proposes to require that all hose carrying any gas or substances that may ignite be inspected for leaks prior to the beginning of each shift. The proposed language is a restatement of paragraph § 1915.55(f)(3).

In paragraph (d)(6), OSHA would propose that hose that has been subjected to flashback, or that shows evidence of severe wear or damage, not be used until it has been tested without failure to twice its normal operating pressure, but is no case less than 200 psi (1380 kPa). The proposed language is a restatement of paragraph § 1915.55(f)(4).

In paragraph (d)(7), OSHA would propose to require that oil-free air or oil-free inert gas be used to test hose and hose connections. This is a partial restatement of paragraph § 1910.252(a)(5)(v)(e).

In paragraph (d)(8), OSHA would require that hose couplings be of the type that cannot be unlocked or disconnected by means of a straight pull without rotary motion. This is a restatement of paragraph § 1915.55(f)(5).

In paragraph (d)(9), OSHA is proposing to require that containers used for stowage of gas hose be ventilated to prevent the buildup of hazardous concentrations of gas. This is a restatement of paragraph § 1915.55(f)(6).

Paragraph (e)—Gauges and pressure reducing regulators. In paragraph (e)(1), OSHA would require that pressure reducing regulators be marked or labeled for use with specific gases or pressures and limit their use to those gases and pressures for which they are intended and identified. This is a new requirement intended to prevent the intermixing of gases within system components. The proposed language is taken from paragraph 10.7.2 of ANSI Z49.1-1983.

In paragraph (e)(2), OSHA is proposing to require that regulators be drained of oxygen before they are attached to a cylinder or manifold, or before a cylinder is opened. This would be a new requirement designed to reduce the possibility of flammable or explosive vapor-air mixtures in regulators that could ignite and injure employees. The language has been taken from paragraph 10.7.5 of ANSI Z49.1-1983.

In paragraph (e)(3), OSHA is proposing to require that gauges used for oxygen service be marked "USE NO

OIL." Mixing of oil with oxygen creates a hazard to employees. The proposed language is a restatement of paragraph § 1910.252(a)(5)(vi)(c).

Paragraph (f)—Cylinders. In paragraph (f)(1), OSHA would prohibit filling of a cylinder by anyone except the owner of a cylinder or a person authorized by the owner of a cylinder. This is a restatement of §§ 1915.55(c)(2) and 1910.252(a)(2)(v)(b)(13).

In paragraph (f)(2), OSHA would prohibit anyone other than the gas supplier from mixing gases in a cylinder; transferring gases in a cylinder; or transfilling gases from one cylinder to another. This is a restatement of §§ 1915.55(c)(2) and 1910.252(a)(2)(v)(b)(13).

In paragraph (f)(3), OSHA proposes in paragraphs (f)(3) (i), (ii), and (iii) requirements for the marking and identification of cylinders. The proposed language is a restatement of paragraph §§ 1915.55(c)(2) and 1910.252(a)(2)(i)(b).

In paragraph (f)(4), OSHA proposes that compressed gas cylinders be equipped with inlet and outlet connections designed for, and compatible with, equipment that will be attached to them. This is a restatement of paragraph § 1910.252(a)(2)(i)(c).

In paragraph (f)(5), OSHA would require that cylinders with water weight capacity over 30 pounds (13.6 kg), either be equipped with a collar or recess that protects the valve, or have valve protection caps attached. This is a restatement of § 1910.252(a)(2)(i)(1).

In paragraph (f)(6), OSHA would require that cylinders be stored where they would not be exposed to physical damage. This is a restatement of § 1910.252(a)(2)(ii)(b).

In paragraph (f)(7), OSHA would require that cylinders be stored in assigned spaces where they will not be knocked over by passing employees or falling objects. This is a partial restatement of paragraph § 1910.252(a)(2)(ii)(b).

In paragraph (f)(8), OSHA would propose that cylinders be secured to prevent their falling. Cylinders could be secured in place with metal bands, chains, or wire. This is a combined rewrite of paragraph §§ 1915.55(a)(9), 1910.252(a)(2)(ii)(b), and paragraph 10.8.2.1 of ANSI Z49.1-1983.

In paragraph (f)(9), OSHA would propose that cylinders be separated from hazardous materials, from flammable and combustible liquids and from easily ignitable materials by either at least 20 feet (6.1 m), or non-combustible barriers having a fire-resistance rating of at least one-half hour. This provision incorporates paragraph § 1910.252(a)(2)(ii)(b).

(a)(2)(iv) (a) and (c), and paragraphs 10.8.2.2 and 10.8.2.3 of ANSI Z49.1-1983.

In paragraph (f)(10), OSHA proposes that oxygen cylinders stored in outside acetylene generator houses be separated from the generator or carbide storage rooms by a non-combustible gas-tight partition having a fire resistance of at least one hour. This is a restatement of § 1910.252(a)(2)(iv)(b).

In paragraph (f)(11), OSHA would prohibit oxygen from being stored inside acetylene generator rooms. This is a new requirement based upon paragraph 10.8.2.4 of ANSI Z49.1-1983. It is also similar to language in § 1910.252(a)(2)(iv)(a).

In paragraph (f)(12), OSHA would require that fuel and oxygen cylinders be placed valve end up. This is a restatement of § 1910.252(a)(2)(iii)(b).

In paragraph (f)(13), OSHA would prohibit the rough handling of cylinders. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(ii).

In paragraph (f)(14), OSHA would prohibit placing crow bars or other levers under valves or valve protection caps to pry cylinders loose when they are frozen. This is a partial restatement of paragraph § 1910.252(a)(2)(v)(b)(3).

In paragraph (f)(15), OSHA would prohibit the use of cylinders as rollers or supports. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(11).

In paragraph (f)(16), OSHA would prohibit tampering with cylinder safety devices. This is a restatement of paragraph § 1910.252(a)(2)(v)(c)(8).

In paragraph (f)(17), OSHA proposes to require that cylinder valves be closed before cylinders are moved. This is a combined rewrite of paragraphs §§ 1915.55(a)(8) and 1910.252(a)(2)(v)(b)(6).

In paragraph (f)(18), OSHA is proposing that cylinders capable of having valve protection caps have them in place and hand-tightened at all times unless the cylinder is in use or connected for use. This is a restatement of paragraphs §§ 1915.55(a)(1) and 1910.252(a)(2)(v)(b)(1).

In paragraph (f)(19), OSHA proposes to prohibit the use of valve protection caps for lifting or hoisting cylinders. This is a restatement of paragraphs §§ 1915.55(a)(5) and 1910.252(a)(2)(v)(b)(3).

In paragraph (f)(20), OSHA would require the use of suitable platforms or cradles to transport cylinders by crane or derrick. It would prohibit the use of slings or electromagnets for this purpose. This is a restatement of §§ 1915.55(a)(2) and 1910.252(a)(2)(v)(b)(1).

In paragraph (f)(21), OSHA proposes to require that cylinders be secured in

the upright position when they are transported by motor vehicle. This is a restatement of paragraphs §§ 1915.55(a)(4) and 1910.252(a)(2)(v)(b)(4).

In paragraph (f)(22), OSHA would require that cylinders with regulators attached to them must be secured in position and closed prior to moving the cylinder, unless the cylinders are secured on special trucks. This is a restatement of paragraphs §§ 1915.55(a)(6) and 1910.252(a)(2)(v)(b)(4).

In paragraph (f)(23), OSHA proposes to prohibit the dispensing of compressed gas from cylinders without the use of a pressure reducing regulator, unless the equipment to which the cylinder is connected is designed to withstand the full cylinder pressure. This is a restatement of paragraph § 1915.55(d)(3) and is similar to § 1910.252(a)(2)(v)(b)(16).

In paragraph (f)(24), OSHA would limit the use of acetylene to pressures of 15 psig (103 kPa gauge pressure) or less than 30 psia (206 kPa absolute pressure). This is a new requirement and uses the language of paragraph 10.8.4.2 of ANSI Z49.1-1983. It is also similar to § 1910.252(a)(6)(ii)(b).

In paragraph (f)(25), OSHA proposes certain requirements for cleaning valve openings prior to connecting a regulator to a cylinder valve. The valve outlet must be wiped clean and then opened momentarily and closed immediately. This procedure is called "cracking," and will clear the valve of dust and dirt that otherwise might have entered the regulator. In paragraph (f)(26) (i), (ii), and (iii), OSHA would require cracking of a valve, and would contain methods for safe ways to crack a valve. The proposed language is taken from paragraph § 1915.55(d)(1), and is similar to § 1910.252(a)(2)(v)(b)(16).

In paragraph (f)(26), OSHA would require a new procedure to be followed when a regulator is attached to an oxygen cylinder. The new proposed procedure would assure that oxygen regulators are properly adjusted to prevent accidental rupture or ignition of the equipment and injury to employees. The new proposed requirement is taken from paragraph 10.8.4.4 of ANSI Z49.1-1983.

In paragraph (f)(27), OSHA proposes to prohibit the use of hammers or wrenches to open cylinder valves fitted with hand wheels. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(12).

In paragraph (f)(28), OSHA would require that keys, handles, or nonadjustable wrenches be used and kept in place on valve stems of cylinders

not having fixed hand wheels. This requirement would enable employees to turn the gas off quickly in case of an emergency. This is a combined restatement of paragraphs §§ 1915.55(d)(2) and 1910.252(a)(2)(v)(b)(5).

In paragraph (f)(29), OSHA proposes to require that valves on high-pressure non-liquefied gas cylinders be kept fully open in order to prevent leakage around the valve stem. This is a new requirement and is based upon the language in paragraph 10.8.4.7 of ANSI Z49.1-1983.

In paragraph (f)(30), OSHA would prohibit the opening of acetylene cylinder valves more than one and one-half turns, and would recommend no more than three-fourths of a turn. Acetylene cylinder valves should not be opened to the extent where the valve could not be closed quickly in an emergency. This language is a restatement of paragraph § 1910.252(a)(2)(v)(c)(11) and is similar to § 1915.55 (e)(3) and (d)(1).

In paragraph (f)(31), OSHA would prohibit the placing of anything on the top of a cylinder that may damage the safety device or interfere with the quick closing of the valve. This language is a restatement of § 1910.252(a)(2)(v)(c)(5).

In paragraph (f)(32), OSHA proposes to require that cylinder valves be closed when work is finished. This is a restatement of paragraphs §§ 1915.55(a)(8) and 1910.252(a)(2)(v)(b)(7).

In paragraph (f)(33), OSHA proposes to require that cylinder valves be closed and gas released from regulators before they are removed from a cylinder. This is a restatement of paragraphs §§ 1915.55(d)(4) and 1910.252(c)(4).

In paragraph (f)(34), OSHA would require that a suitable cylinder truck, chain, or other steadying device be used to keep cylinders from being knocked over. This is a restatement of paragraph § 1915.55(a)(7).

In paragraph (f)(35), OSHA would require the use of fire resistant shields to protect cylinders from exposure to heat sources such as hot slag, sparks, or flame, when the cylinders cannot be moved to a safe position. This is a restatement of paragraph § 1910.252(a)(2)(v)(b)(9).

In paragraph (f)(36), OSHA would prohibit certain practices that may subject a cylinder to contact with electrical current. Paragraphs (f)(37) (i), (ii), (iii), and (iv), are restatements of §§ 1910.252(a)(2)(v)(b)(10) and 1915.55(b)(2).

In paragraph (f)(37), OSHA proposes to prohibit the placement of cylinders in a location where they would be subject

to sources of artificial heat. This is a restatement of paragraph § 1915.55(b)(3).

In paragraph (f)(38), OSHA would prohibit cylinders from exceeding 130 °F (54 °C). Higher temperatures pose an explosion hazard. The proposed language has been taken from paragraph 10.8.1.8 of ANSI Z49.1-1983.

Paragraph (g)—Cylinder emergencies. In paragraph (g), OSHA would propose to require the removal of leaking cylinders to a safe location outdoors, away from sources of ignition; the tagging of the cylinder; and the notification of the gas suppliers. The proposed language is a restatement of paragraphs §§ 1915.55(d) (5) and (6) and 1910.252(a)(2)(v)(c) (6) and (7). The proposal explicitly requires compliance with the general industry tag standard, 29 CFR 1910.145(f), to signal "DANGER" and to warn or instruct workers of the hazard with a message such as "KEEP FLAME AWAY."

Paragraph (h)—Fuel gas manifolds. In paragraph (h)(1)(i), OSHA would limit the number of fuel gas cylinders that may be connected to fuel gas manifolds located inside buildings. The proposed language is a restatement, in part, of § 1910.252(a)(3)(i)(b), and is also found in paragraph 10.9.3.1 of ANSI Z49.1-1983.

In paragraph (h)(1)(ii), OSHA proposes to require a minimum separation distance (at least 50 feet (15 m)) or a noncombustible barrier rated at least one-half hour when more than one manifold is located in the same room. Again the proposed language is derived from paragraph § 1910.252(a)(3)(i)(b), and is also found in paragraph 10.9.3.1 of ANSI Z49.1-1983.

In paragraph (h)(2), OSHA would require that fuel gas manifolds exceeding 3,000 cubic feet be located outside, or in a separate building or room constructed in accordance with ANSI/NFPA 51-1983, *Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes*. This is a restatement of paragraph 10.9.3.2 of ANSI Z49.1-1983, and is similar to § 1910.252(a)(3)(i)(c).

Paragraph (i)—Oxygen manifold capacity and locations. In paragraph (i)(1) (i) and (ii), OSHA would require certain criteria for the location of oxygen manifolds in relation to fuel gas cylinders and other combustible materials. This is a restatement of paragraph § 1910.252(a)(3)(ii)(b).

In paragraph (i)(2) (i) and (ii), OSHA proposes to limit the number and location of high pressure oxygen cylinders. This is a restatement of paragraph § 1910.252(a)(3)(ii)(c), with the exception of a change to the separation distance. The existing OSHA standard

requires a 50-foot separation distance. OSHA believes that a 20-foot separation distance would be sufficient to ensure safety. Paragraph 10.9.4.2.1 of ANSI Z49.1-1983 also recommends a 20-foot distance.

In paragraph (i)(3), OSHA proposes certain limitations on the location of high pressure oxygen manifolds connected to cylinders with an aggregate capacity of more than 6,000 cubic feet (168 cubic meters) of oxygen. The proposed language is a restatement of paragraph 10.9.4.2.2 of ANSI Z49.1-1983, and is similar to § 1910.252(a)(3)(ii)(d).

Paragraph (j)—Low pressure oxygen manifolds. In paragraph (j)(1) OSHA proposes a new requirement limiting the total capacity of low-pressure oxygen manifolds to 12,000 cubic feet (336 cubic meters). The new requirement is proposed to provide protection where a gap exists in the present standards. The new language is taken from paragraph 10.9.4.3.1 of ANSI Z49.1-1983.

In paragraph (j)(2) (i) and (ii) OSHA would address the capacities and locations of low pressure oxygen manifolds. The new proposed language is a restatement of paragraph 10.9.4.3.2 of ANSI Z49.1-1983. The new language is proposed to provide the same coverage for low-pressure manifolds that is provided for high-pressure manifolds.

Paragraph (k)—Manifold requirements. In paragraph (k)(1), OSHA would require pressure regulators on high pressure manifolds. The proposed language is a restatement of requirements in § 1910.252(a)(3)(ii)(f). The proposed language has been taken from paragraph 9.5.1.1 of ANSI Z49.1-1983.

In paragraph (k)(2), OSHA would require that low pressure manifolds be constructed for use at a pressure of 250 psig (1700 kPa gage); that they have a minimum bursting pressure of 1000 psig (6.9 MPa gage); and that they be protected by a safety relief device that will relieve at a maximum pressure of 500 psig (3440 kPa gage). The proposed language is a restatement of § 1910.252(a)(3)(iii)(a).

In paragraph (k)(3), OSHA proposes to require that manifold hose have a minimum bursting pressure of 1000 psig (6.9 MPa gage). This is a restatement of paragraph § 1910.252(a)(3)(iii)(b).

In paragraph (k)(4), OSHA would require that assembled low pressure manifolds, including leads, be tested and proven gas tight at a pressure of 300 psig (2.07 MPa gage). The use of flames for testing would be prohibited. This is a

restatement of paragraph

§ 1910.252(a)(3)(iii)(c).

In paragraph (k)(5), OSHA would require a caution sign identifying low pressure manifolds and prohibiting the connection of cylinders with a pressure above 250 psig (1700 kPa). This is a restatement of paragraph § 1910.252(a)(3)(iii)(e).

In paragraph (k)(6), OSHA would require that each fuel gas cylinder lead be provided with a back-flow check valve. This proposed language has been taken from paragraph 10.9.5.3 of ANSI Z49.1-1983, and is similar to § 1910.252(a)(3)(iv)(d).

In paragraph (k)(7), OSHA would require acceptable flash arresters to be installed between each cylinder and the coupler block. The proposed language would also permit the use of one flash arrester where there are not more than three cylinders, and the cylinders are installed outdoors. This provision is a restatement of § 1910.252(a)(3)(v)(d).

In paragraph (k)(8), OSHA proposes certain criteria for portable outlet headers, which are often used on shipyard piers and drydocks where the service piping cannot be located close enough to the work to provide a direct supply. In paragraph (k)(8)(i), OSHA proposes to prohibit the use of portable outlet headers indoors or onboard vessels except where they are necessitated by condition precluding the direct supply of gases from outlets on a service piping system. This is a restatement of paragraph § 1910.252(a)(3)(iv)(a).

In paragraph (k)(8)(ii), OSHA proposes to require a shut-off valve on each outlet on the service piping that supplies oxygen or fuel-gas to a portable outlet header. This is a restatement of paragraph § 1910.252(a)(3)(iv)(b).

In paragraph (k)(8)(iii), OSHA would require detachable caps on service outlets of portable outlet headers. This is a restatement of paragraph § 1910.252(a)(3)(iv)(f).

In paragraph (k)(8)(iv), OSHA proposes to require master shut-off valves on both oxygen and fuel gas lines at the entry end of the portable outlet header. This is a restatement of § 1910.252(a)(2)(iv)(d).

In paragraph (k)(8)(v), OSHA would require that back pressure prevention devices be installed on portable outlet headers for fuel gas service. This is a restatement of paragraph § 1910.252(a)(3)(iv)(e).

In paragraph (k)(8)(vi), OSHA would require that portable outlet headers be supported securely by frames. A frame must keep the portable outlet header in the correct operating position and protect it from damage during handling

and operation. This is a restatement of paragraph § 1910.252(a)(3)(iv)(h).

In paragraph (k)(9), OSHA would require that manifolds be installed under the supervision of someone familiar with proper manifold set-up and operation procedures. This is a restatement of paragraph § 1910.252(a)(3)(v)(a).

Section 1915.54 Arc welding, cutting and heating.

According to the National Fire Protection Association's (NFPA) *Fire Protection Handbook* (Ref. 3), the term arc welding,

... applies to a number of processes that use an electric arc as the heat source for melting and joining metals. The arc is a useful tool because its heat can be concentrated and controlled quite effectively. Frequently, but not always, a filler metal must be used to obtain a good joint. The arc is struck between the metals to be welded and an electrode, which is maneuvered along the joint or which may remain stationary while the work is moved beneath it. The electrode may be consumable or nonconsumable. If the latter, a separate rod or wire may be used as the filler metal. Consumable electrodes supply their own filler metal by melting and, by decomposition of either a covering or a core, may shield the weld zone from unwanted atmospheric effects. [Section 9/Chapter 11, *Fire Protection Handbook*, 15th Edition]

Arc welding processes include shielded metal arc welding, gas metal arc welding, gas tungsten arc welding, plasma arc welding, and submerged arc welding.

Paragraph (a)—Electrical shock hazards. In paragraph (a)(1), OSHA proposes to protect employees from possible contact with electrical current from alternating current (a.c.) or single-phase transformer-rectifier arc welding machines while working under wet conditions, or warm surroundings where perspiration is a factor, or while working in locations where there is a high risk of accidental contact with live electrical parts. Under such working conditions, employees are required to wear dry personal protective clothing. Wet or damp clothing may reduce contact resistance and increase current to a value high enough to cause such violent muscular contraction that the welder cannot release contact with the live part. This is a new standard and the proposed language is taken from paragraph 11.2.2 of ANSI Z49.1-1983.

In paragraph (a)(2), OSHA proposes to require that employee contact with live electrical parts of arc welding equipment be prevented by insulating conductive parts near the employee. This is a restatement of § 1910.252(b)(2)(iv)(d) using performance-oriented language.

In paragraph (a)(3), OSHA would limit the voltage output of welding machines. The limits are a restatement of § 1910.252(b)(2)(iii).

In paragraph (a)(4), OSHA proposes to require the enclosure of all control apparatus except operating wheels, levers, and handles. This is a restatement of § 1910.252(b)(2)(iv)(b).

In paragraph (a)(5), OSHA proposes to require that input power terminals, tap change devices, and live metal parts connected to input circuits be completely enclosed and accessible only by means of tools. This is a restatement of § 1910.252(b)(2)(iv)(c).

In paragraph (a)(6), OSHA would limit the size of welding leads connected to a power source, based upon the size of the grounding connector. OSHA would also require that terminals be marked to indicate when they were grounded. This is a restatement of § 1910.252(b)(2)(iv)(d).

In paragraph (a)(7), OSHA would require welding lead terminals be protected from accidental electrical contact by employees, or from metal objects that may transfer the current to employees. The language is a restatement of paragraph (b)(2)(iv)(d). Several methods of achieving protection are listed in the proposal (i.e., dead-front receptacles, recessed openings, hinged covers, heavy insulating sleeves), however, alternative means may be instituted if they are equivalent.

In paragraph (a)(8), OSHA would place limits on the voltage of portable control equipment used by employees. In paragraph (a)(8)(i), OSHA proposes to limit voltage to portable control devices carried by employees to 120 volts.

In paragraph (a)(8)(ii), OSHA proposes to require the grounding of exposed metal parts of portable control devices operating above 50 volts through a grounding conductor in the control cable. The proposed language in paragraphs (a)(8)(i) and (ii) is a restatement of § 1910.252(b)(2)(iv)(e).

In paragraph (a)(9), OSHA would prohibit the use of autotransformers or a.c. reactors to draw welding current directly from any primary a.c. power source having a voltage exceeding 80 volts. This is a restatement of paragraph § 1910.252(b)(2)(iv)(f).

Paragraph (b)—Equipment. In paragraph (b)(1)(i), OSHA would propose to limit the types of electrode holding devices used on arc welding equipment. This is a restatement of § 1915.56(a)(1).

In paragraph (b)(1)(ii), OSHA proposes to require that current carrying parts of electrode holders be insulated against the maximum voltage

encountered to ground. This is a restatement of § 1915.56(a)(2).

In paragraph (b)(1)(iii), OSHA would require the removal from service of defective electrode holders. This is similar to § 1915.56(d)(4) and 1910.252(b)(4)(ii)(a), which require all defective arc welding equipment to be removed from service.

In paragraph (b)(2)(i), OSHA would require that all welding cable be insulated, flexible, and capable of handling the maximum current requirements of work in progress. This is a restatement of paragraph § 1915.56(b)(1).

In paragraph (b)(2)(ii), OSHA proposes to limit the type of cable used for arc welding to be either free of repair or splices for a minimum ten feet (3 m) from the end of the cable to which the electrode holder is connected, or the splice connector must have an insulating quality equal to or greater than the original cable. This is a restatement of paragraph § 1915.56(b)(2).

In paragraph (b)(2)(iii), OSHA proposes to require that connections or splices between two or more cables be insulated to a capacity at least equal to that of the cable being used. This is a restatement of paragraph § 1915.56(b)(3).

In paragraph (b)(2)(iv), OSHA would require the proper connection and insulation of cable lugs when they are used to fasten cable together. This is a restatement of paragraph § 1915.56(b)(3).

In paragraph (b)(3)(i), OSHA would require that the workpiece or the metal upon which a welder works be grounded. This is a new requirement to assure that employees are protected from electrical shock, and is based upon the language in paragraph 11.3.2 of ANSI Z49.1-1983.

In paragraph (b)(3)(ii), OSHA would require that ground return cables be capable of carrying a current capacity equal to or exceeding the maximum output capacity of all of the arc welding or cutting units it serves. This is a restatement of paragraph § 1915.56(c)(1).

In paragraph (b)(3)(iii), OSHA proposes to permit building frames, conduits, pipe lines, or other metal structures to be used as part of a ground return circuit. To be used as such, these structures must (1) ensure continuity to ground; (2) be capable of carrying current at least equal to the maximum output of all the arc welding units they serve; and (3) be free of gases, flammable liquids, or other electrical circuits. This is a restatement of paragraph § 1915.56(c)(2).

In paragraph (b)(3)(iv), OSHA would require that when a pipeline or other metal structure is used as part of a ground return circuit, electrical contact

exists in all joints of the structure or pipeline. OSHA would require rejection of a pipeline or other structure as part of the ground return circuit if an arc, sparks or heat are generated at any point along the circuit line. This is a restatement of paragraph § 1915.56(c)(3).

In paragraph (b)(3)(v), OSHA proposes to require that all joints on pipelines or other metal structures continuously used as a ground return circuit be bonded. Periodic inspections of the structure's joints must be conducted to ensure that electrolysis has not occurred or fire hazards exist because of such continuous use. This is a restatement of paragraph § 1915.56(c)(4).

In paragraph (b)(3)(vi), OSHA would require that the frames on all arc welding and cutting machines be grounded. This must be done either through a third wire in the cable containing the circuit conductor, or through a separate wire which is grounded at the source of the current. This is a restatement, in part, of paragraph § 1915.56(c)(5).

In paragraph (b)(3)(vii), OSHA would require that grounding circuits, other than those employing a vessel's metal structure, be checked to ensure that the circuit between the ground and the grounded conductor has resistance low enough to permit sufficient current to flow that would cause the fuse or circuit breaker to interrupt the current. This is a restatement, in part, of paragraph § 1915.56(c)(5).

In paragraph (b)(3)(viii), OSHA proposes to require that ground connections are inspected to ensure that they are mechanically strong and capable of safely carrying current equal to or exceeding the total maximum output capacity of all the arc welding units it serves. This is a restatement of paragraph § 1915.56(c)(6).

Paragraph (c)—Operating instructions. In paragraph (c)(1), OSHA proposes to prohibit the use of welding machines that leak cooling water, shielding gases, or engine fuel. Such leaks could expose employees to possible fire and explosion hazards. This is a restatement of paragraph § 1910.252(b)(4)(iv).

In paragraph (c)(2), OSHA would require that electrode holders be either de-energized by turning the welding machine off, or disconnected from the welding lead, whenever an employee must leave a work area or stop for an appreciable amount of time, such as to eat lunch. This is a restatement of paragraph § 1915.56(c)(3).

In paragraph (c)(3), OSHA proposes to require welding machines to be unplugged prior to their being moved.

This is a new requirement from paragraph 11.4.7 of ANSI Z49.1-1983, and is intended to prevent electrical shock during moving because the machine is live. The proposed language is similar to paragraph § 1915.56(a)(3), which requires that the equipment be "turned off" rather than unplugged.

In paragraph (c)(4), OSHA would require that electrodes be removed from holders when they are not in use to eliminate the danger of accidental electrical shock. This is a restatement of paragraph § 1915.56(d)(1).

In paragraph (c)(5), OSHA proposes to require that when electrode holders are not being used they must be placed in a location where they can not make electrical contact with employees, conducting objects, flammable or combustible liquid containers, or compressed gas cylinders. This is a restatement of paragraph § 1915.56(d)(1).

In paragraph (c)(6), OSHA proposes that when guns of semi-automatic welding machines are not being used they must be placed so that the gun switch cannot be operated accidentally. This is a restatement of paragraph § 1915.56(d)(1).

In paragraph (c)(7), OSHA would require that employees be instructed on how to avoid electrical shock when operating welding equipment. Voltages used with arc welding equipment can cause severe injuries or even death. Even mild shocks could cause involuntary muscle spasms which can lead to injurious falls and other accidents. This is a restatement of paragraph § 1910.252(b)(4)(i).

In paragraph (c)(8), OSHA would prohibit the cooling of electrode holders by immersion in water. Such action might subject the welder or cutter to electric shock. This requirement already exists in § 1915.56(d)(2), but the proposed language has been taken from 11.4.9.5 of ANSI Z49.1-1983.

In paragraph (c)(9), OSHA would require that water-cooled holders or guns not be used if any water leak or condensation exists. Again, the existence of water can subject employees to a greater danger of electrical shock. This is a new requirement and it has been taken from paragraph 11.4.9.6 of ANSI Z49.1-1983.

In paragraph (c)(10), OSHA would require that arc welding machines shall always have their output electrically de-energized when tungsten electrodes are changed in gas tungsten arc electrode holders. This is a new requirement intended to prevent employee shock and has been taken from paragraph 11.4.9.7 of ANSI Z49.1-1983.

In paragraph (c)(11), OSHA proposes to require protection from exposure to direct rays of welding arcs for employees who may pass through the vicinity of arc welding operations. Various methods can be used to comply, including enclosing the welding in a booth painted with a finish with low reflectivity; using non-combustible screens or shields similarly painted; or by requiring appropriately tinted goggles. Any effective means may be used to comply. This is a restatement of paragraph §§ 1915.56(e) and 1910.252(e)(2)(iii).

Paragraph (d)—Maintenance. In paragraph (d)(1), OSHA proposes that commutators in welding machines be kept clean to prevent excessive flashing. This is a new provision intended to reduce possible flammable vapor ignition sources. The proposed language has been taken from paragraph 11.5.2 of ANSI Z49.1-1983.

In paragraph (d)(2), OSHA would require that arc welding machines used outdoors be protected from rain and other inclement weather. Water, of course, could present electrical shock hazards. This provision is taken from paragraph 11.5.2.2 of ANSI Z49.1-1983, but also reflects the intent behind § 1910.252(b)(4)(ix)(b).

In paragraph (d)(3), OSHA would require that any arc welding machine that has become wet must be dried and properly tested for safe operation prior to being placed into service. This is a restatement of § 1910.252(b)(4)(ix)(b).

Section 1915.55 Resistance welding.

The Fire Protection Handbook, 15th Edition (Ref. 3) describes resistance welding as follows:

Welding heat for this process is created by resistance to flow of current through the parts being joined. Resistance welding is generally used to join two overlapping metal sheets that may have different thicknesses. Electrodes conduct current through the sheets, which are clamped or rigidly held to provide good contact and pressure for holding molten metal at the joint. [Section 9/Chapter 11, *Fire Protection Handbook*, 15th Edition]

Paragraph (a)—Guarding. In paragraph (a)(1), OSHA proposes that all control initiating devices on resistance welding equipment be arranged or guarded to prevent accidental activation. Although the proposed language is taken from paragraph 12.3.1 of ANSI Z49.1-1983, it reflects OSHA's intent expressed by § 1910.252(c)(1)(iv), (c)(2)(iv) and (c)(3)(iv).

In paragraph (a)(2), OSHA would require that all chains, gears, operating linkages, and belts associated with

resistance welding equipment be arranged or guarded to prevent employee contact. This is a restatement of paragraph § 1910.252(c)(2)(iv).

In paragraph (a)(3), OSHA proposes that point-of-operation guards be provided and used where employee's hands or fingers may become caught in the machinery. This is a restatement of paragraph § 1910.252(c)(2)(iv).

In paragraph (a)(4), OSHA would require that all suspended portable welding gun equipment, with the exception of the gun assembly, be equipped with a support system capable of supporting the total impact load in the event of failure of any component of the supporting system. The provision is performance-oriented; any combination of chains, cables, clamps or other devices may be used. This is a restatement of paragraph § 1910.252(c)(3)(ii).

In paragraph (a)(5), OSHA would require that moving holder mechanisms entering a gun frame be designed to prevent the shearing of fingers placed on the operating movable holder. If the holder mechanism cannot be designed to prevent shearing, guards shall be used to eliminate such possibility. This is a restatement of paragraph § 1910.252(c)(3)(v).

Paragraph (b)—Electrical. In paragraph (b)(1), OSHA proposes to require that all external weld-initiating control circuits operate at 120 volts root mean square (rms) or less for stationary equipment, and 36 volts or less for portable equipment. The stationary equipment voltage limit is a restatement of § 1910.252(c)(2)(i). The portable equipment voltage limit is similar to § 1910.252(c)(3)(iv), except that 36 volts or less is allowed by the proposal instead of the 24 volt limit expressed in the current standard. OSHA believes the 36 volts limit is sufficiently protective of workers using portable equipment. ANSI Z49.1-1983, paragraph 12.4.1, also used the 36 volt limit.

In paragraph (b)(2)(i), OSHA would require that resistance welding equipment and control panels containing capacitors used for stored energy resistance welding involving voltages over 550 volts rms be insulated and protected by complete enclosure. This is a restatement of paragraph § 1910.252(c)(2)(ii).

In paragraph (b)(2)(ii), OSHA proposes to require that all doors of the enclosures proposed in paragraph (b)(2)(i) above be provided with interlocks or contacts wired into the control circuits that are designed to interrupt power and short circuit all capacitors when the door panel is

opened. This is a restatement of paragraph § 1910.252(c)(2)(ii).

In paragraph (b)(2)(iii), OSHA would require that a manually operated switch or other suitable positive device be installed on equipment containing capacitors described above to assure that those capacitors are completely discharged. This is a restatement of paragraph § 1910.252(c)(2)(ii).

Paragraph (c)—Locks and interlocks. In paragraph (c)(1), OSHA would require that all doors and access panels to resistance welding machines and control panels accessible at the production floor be kept locked and interlocked to prevent access by unauthorized employees. A door or panel will be considered locked if a key, wrench or other instrument is required to open it. This is a restatement of paragraph § 1910.252(c)(2)(iii).

In paragraph (c)(2), OSHA proposes that control panels remotely located on overhead platforms or in separate rooms shall be locked, interlocked or guarded by a physical barrier and warning signs, and that the control panels be kept closed when the equipment is not being serviced. This is a new paragraph. The present standard at § 1910.252(c)(2)(iii) makes no exception from the locking and interlocking requirements for control panels located away from the production floor. The new provision is intended to allow other methods of isolating control panels from workers when the panels are already remote from the production floor or difficult to reach. The proposed language is taken from paragraph 12.4.3.2 of ANSI Z49.1-1983.

Paragraph (d)—Spark shields. In paragraph (d), OSHA would require the installation of fire-resistant spark shields or guards, or the use of personal protective equipment to prevent injury to employees in, or passing through, the work area due to flying sparks or molten metal. The proposed language is a restatement of paragraph § 1910.252(c)(2)(v).

Paragraph (e)—Stop buttons. In paragraph (e), OSHA would propose to require one or more safety emergency stop buttons on all welding machines that: (1) Require three seconds or more to complete a sequence; (2) have mechanical movements that can be hazardous to employees if guards are removed; and (3) have no buttons that would not themselves create a hazard to employees. This is a restatement of paragraph § 1910.252(c)(2)(vii), with the exception that the existing standard requires two or more emergency buttons. OSHA is reducing the number of buttons required because it is

believed that one button is often sufficient to activate emergency stops by the machine operator. Further, if two or more buttons are necessary, they can be installed without violating the standard. This proposed provision is in accord with paragraph 12.4.5 of ANSI Z49.1-1983.

Paragraph (f)—Grounding. In paragraph (f), OSHA proposes three methods by which welding transformer secondaries must be grounded. The proposed language in paragraphs (f) (1), (2), and (3) has been taken from paragraph 12.4.6 of ANSI Z49.1-1983, and is similar to § 1910.252(c)(2)(ix).

Paragraph (g)—Static safety devices. In paragraph (g), OSHA proposes that static safety devices, such as pins, blocks and latches, be used with large resistance welding machines. The proposed language has been adopted from paragraph 12.5 of ANSI Z49.1-1983. OSHA believes the ANSI standard addresses and describes the requirement more fully than the current standard at § 1910.252(c)(2)(viii), although the current standard does reflect the same intent.

In paragraph (g)(1), OSHA would require that electrically interlocked safety devices be provided on large welding machines incorporating a movable platen or welding head.

In paragraph (g)(2), OSHA proposes to require that the safety devices required in proposed paragraph (g)(1) must prevent the movement of the platen or welding head under static load.

In paragraph (g)(3), OSHA proposes to require that even though more than one safety device may be required, each device alone shall be capable of sustaining the full static load that the platen or welding head may impose on the devices.

III. References

1. ANSI/ASC Z49.1-1983, *Safety in Welding and Cutting*, American Welding Society, 550 N.W. LeJeune Road, Miami, FL 33126, 1983.
2. NFPA 51B-1984, *Standard for Fire Prevention in Use of Cutting and Welding Processes*, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1984.
3. *Fire Protection Handbook*, 15th Edition, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1981.
4. ANSI/NFPA 51-1983, *Design and Installation of Oxygen-Fuel Systems for Welding, Cutting, and Allied Processes*, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action.

Data Sources

The primary source for this section is the November 1985 Draft Final Report by CONSAD Research Corporation entitled, "Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and ship breaking industries would be affected by the proposed consolidation of the welding, cutting and heating sections of the existing Part 1915 Subpart D and the existing Part 1910 Subpart Q because those operations are performed in all shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 678 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

Welders are the group facing the most risk during welding, cutting, and heating operations. OSHA has estimated that approximately 15 percent of the shipyard employees are welders. The actual number of welders will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 workers in 1986. Thus, the number of workers at risk from injuries associated with welding would have been about 26,600 in 1980 and about 20,450 in 1986. Thus, OSHA has estimated that the population-at-risk would be between 20,450 and 26,600 employees.

Risk of Fatality or Injury

OSHA has estimated that the annual number of injuries in shipyards due to welding accidents was between 395 and 640 between 1981 to 1986. Of these injuries, 50 to 80 were lost workday injuries. As the average number of lost workdays for lost workday injuries due to this type of accident was 10.3 days, OSHA has estimated that the annual number of lost workdays in shipyards due to welding accidents would be between 515 days and 825 days.

In addition, OSHA has determined that there would be between one and two annual fatalities in shipyards associated with welding accidents.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving welding, cutting, and heating in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of welding, cutting and heating standards into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Highly technical provisions have been replaced with clearer simpler language. Thus, the proposed consolidation may lead to a better understanding of the regulations and an increase in compliance. This, in turn, may lead to an increase in employee safety while the employee is welding, cutting or heating.

The second source is the benefits that should accrue to those employers who would be allowed to use certain welding practices and equipment that are not allowed by the existing requirements but that would present no danger to welders. The use of these advanced practices and equipment would allow employers to maintain the necessary level of safety while increasing productivity over that possible under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed

by OSHA for incorporation into the RIA for the final rule.

The basis for the estimated costs of compliance with the proposed standard is the CONSAD report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. That information was used by CONSAD to develop its estimates of the costs of compliance.

The proposed standard requires that personal exposures to airborne hazardous substances during welding, cutting and heating operations be below the established limits for the substances in the 29 CFR 1910.1000 Z Tables, and in the Part 1910 hazardous substance-specific standards. In addition, the proposal requires flammability testing of surfaces covered by a preservative coating. Although, there are currently no provisions in 29 CFR 1910.1000 requiring monitoring of employees exposure, and flammability testing is already required under the existing Part 1915, CONSAD assumed that some additional monitoring activities would take place. If this additional monitoring were conducted, OSHA estimates that the annual cost would be \$1.8 million dollars.

OSHA invites public comment concerning this preliminary RIA. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary preliminarily certifies that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

An important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant cost upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than on large

entities, thereby putting small entities at a competitive disadvantage.

OSHA has identified only minor costs associated with Subpart D. Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500-1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, and proper use and handling of equipment. The proposal also contains language, definition, and format changes. These revisions do not affect air, water, or soil quality, plant or animal life, the use of the land, or other aspects of the environment. As such these revisions are therefore categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposed standard contains no "collection of information" (recordkeeping) requirements.

VII. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S-043, Room N-2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions

received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11 interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objections is taken or about which the hearing request is made, and must state the grounds therefor;

4. Each objection and hearing requests must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standards within six months of the publication date of a final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently four states (Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector on-shore

maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, California, Connecticut,¹ Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,¹ North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Competent person, Confined space, Occupational safety and health, Protective equipment, Respiratory protection, Ship breaking, Shipbuilding, Ship repair, Vessels, Welding.

X. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to revise 29 CFR Part 1915, Subpart D as set forth below.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation of 29 CFR Part 1915 would continue to read as follows:

Authority: Sec. 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), sections 4, 6, and 8, of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. It is proposed to revise Subpart D of Part 1915 to read as follows:

Subpart D—Welding, Cutting, and Heating for Shipyard Employment

Sec.

- 1915.51 Scope, application, and definitions applicable to this subpart.
- 1915.52 General requirements.
- 1915.53 Oxyfuel gas welding and cutting.
- 1915.54 Arc welding and cutting.
- 1915.55 Resistance welding.

Subpart D—Welding, Cutting, and Heating for Shipyard Employment

§ 1915.51 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart applies to all welding, cutting, and heating operations and equipment in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking) as set forth below, except construction work regulated by 29 CFR Part 1926.

(2) Subpart Q of 29 CFR Part 1910 does not apply to shipyard workplaces and operations.

(3) Section 1915.53 covers additional safe practices for the use of oxyfuel gas welding, cutting, soldering, brazing, and related equipment. It does not cover specifications for the design and construction or installation of bulk gas supply or piping distribution systems with a storage capacity of greater than 20,000 cubic feet (566 cubic meters).

(b) *Definitions.*

"Immediate severe health effect" means that an acute clinical sign of a serious, exposure-related reaction is manifested within 72 hours after exposure.

"Immediately dangerous to life or health (IDLH)" means any atmosphere that poses an immediate threat to life, or which is likely to result in acute or immediate severe health effects.

§ 1915.52 General requirements.

(a) *Equipment.* (1) Welding, cutting, and heating equipment shall only be used for the purpose for which it is designed and kept in good working condition.

(2) Equipment shall be inspected at the beginning of each shift and periodically thereafter to be sure that it is in good working condition.

(3) Defective equipment shall be tagged and removed from service until repaired. The tag shall include the signal word "DANGER" and a warning or instructional message, such as, "DO NOT USE," in accordance with § 1910.145(f) of this title.

(b) *Engineering controls, work practices, and personal protective equipment (PPE).* (1) Unless otherwise specified in paragraph (h) of this section, employee exposure to toxic and hazardous substances shall be

controlled in accordance with Part 1910, Subpart Z, of this title.

(2) Where ventilation is used as the means to control employee exposure to or below the permissible exposure limits of Part 1910, Subpart Z, of this title, contaminated air exhausted from a working space shall be discharged clear of all sources of intake air.

(3) Appropriate personal protective equipment shall be provided and used in accordance with Subpart I of this part.

(4) Employees welding, cutting or heating, or assisting in such work shall be protected by appropriate protective clothing or equipment, such as shields or curtains, to prevent thermal or radiation burns.

(5) Only air shall be used for ventilation, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area. Oxygen, or any other gases or mixtures of gases, shall not be used for such purposes. Where air is used for cleaning purposes, the discharge pressure shall not exceed 30 pounds per square inch (207 kPa).

(c) *Fire protection.* (1) Objects to be welded, cut, or heated shall be moved to a designated safe location whenever practicable.

(2) If an object cannot be moved to a safe location, all movable fire hazards in the work area shall be taken to a safe place.

(3) Where both the object and fire hazards in the work area are not movable, positive means shall be used to protect the immovable fire hazards and nearby employees performing other tasks from heat, sparks, and slag.

(4) When welding, cutting, or heating may introduce a fire hazard in adjacent compartments, the same fire precautions shall be taken in those adjacent compartments as those required in the work compartment.

(5) Where combustible materials are present in adjacent compartments that may be ignited by hot slag, all openings in floors, decks, walls, and bulkheads shall be covered or closed to prevent the passage of hot slag.

(6) Fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, shall be provided and readily available. Vaporizing liquid-type fire extinguishers shall not be used in confined spaces.

(7) Before welding, cutting, or heating is begun in a location not designed for such purposes, an inspection for fire safety shall be performed and authorization to begin work given by a competent person.

(8) When the welding, cutting, or heating operation is such that normal fire prevention precautions are not

¹ Plan covers only State and local government employees.

sufficient, fire watches shall be provided during hot work and maintained for as long as necessary after completion of hot work to assure that no possibility of fire exists in the work area. Employees serving on fire watches shall be trained to perform their expected duties, including, but not limited to, how to use fire fighting equipment and how to sound fire alarms.

(9) No welding, cutting, or heating shall be done in flammable or explosive atmospheres except as provided in paragraph (h) of this section.

(d) *Work with preservative coatings.* (1) Before welding, cutting, or heating is begun on any surface covered by a preservative coating whose flammability is not known, a test shall be made by a competent person to determine the coating's flammability. If a preservative coating's flammability cannot be determined before the work process begins, coated surfaces shall be considered highly flammable and stripped far enough away from the area to be heated to prevent their ignition.

(2) When preservative coatings have been determined to be highly flammable they shall be stripped far enough away from the area to be heated to prevent ignition.

Note.—Preservative coatings are considered highly flammable when scrapings burn with extreme rapidity.

(3) All surfaces in enclosed spaces that are covered with toxic preservatives shall be stripped of all toxic coating far enough away from the point of heat application to prevent employee exposure to toxic vapor, or the employees shall be protected by acceptable respiratory equipment.

(4) The following precautions shall be taken, before welding, cutting, or heating is begun on metals covered by soft and greasy preservative coatings:

(i) The atmosphere in the space shall be tested by a competent person to ensure that it does not contain explosive vapors. If such vapors are present, no hot work shall be authorized until precautions have been taken to ensure that the welding, cutting or heating can be performed safely.

(ii) Soft and greasy preservative coatings shall be removed a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not be appreciably raised. Flame or heat shall not be used to remove soft and greasy preservative coatings.

(iii) Immediately after welding, cutting, or heating has begun on surfaces covered by soft and greasy preservatives, and at frequent intervals after that, a competent person shall test

to ensure that no flammable vapors are present. If flammable vapors are determined to be present, work shall be stopped immediately and shall not be resumed until such additional precautions have been taken as are necessary to ensure that the operation can be resumed safely.

(e) *Work in and on hollow metal spaces, containers and structures not covered by § 1915.12.* (1) Drums, containers, or similar hollow or jacketed structures that have contained flammable substances shall either be filled with water or thoroughly cleaned of flammable substances and tested for residues that may produce flammable vapors before welding, cutting, or heating is authorized. In case of water loss from the container, drum, or similar hollow or jacketed structures during the work process, water shall be added as necessary to ensure that the container remains full. Any pipe lines or connections to these hollow structures must be disconnected or blanked.

(2) Before welding, cutting, heating, or brazing is begun on structural voids such as skegs, bilge keels, fair waters, masts, booms, support stanchions, pipe stanchions, or railings, a competent person shall inspect the void and, if necessary, test the void for the presence of flammable liquids and vapors. If flammable liquids or vapors are present, the void shall be made safe before hot work is begun.

(3) Before welding, cutting, or heating is authorized on drums, containers, or other hollow or jacketed structures, they shall be vented or opened to permit the escape of air or gases and to prevent pressure build-up inside the workpiece during the application of heat.

(f) *Work with fissionable materials.* (1) In activities involving the use of and exposure to sources of ionizing radiation, not only on conventionally powered but also on nuclear powered vessels, the applicable provisions of the Nuclear Regulatory Commission's Standards for Protection Against Radiation (10 CFR Part 20) relating to protection against occupational radiation exposure shall apply.

(2) Any activity which involves the use of radioactive material, whether or not under license from the Nuclear Regulatory Commission, shall be performed by competent persons trained in the proper and safe operation of such equipment. In the case of materials used under Commission license, only persons actually licensed or under the direction and supervision of the licensee, shall perform such work.

(g) *Work with metals of toxic significance.* (1) Welding, cutting, or heating involving any metals that may

generate a toxic substance exposure to employees upon the application of heat shall be controlled in accordance with paragraph (b) of this section. Examples of such metals currently include:

(i) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials.

(ii) Lead base metals or metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

(iii) Cadmium-bearing filler materials, cadmium-bearing or cadmium-coated base metals.

(iv) Chromium-bearing metals or metals coated with chromium-bearing materials.

(v) Metals coated with mercury-bearing materials.

(vi) Beryllium-containing base or filler metals.

(2) Residues and cargoes of metallic ores of toxic significance shall be removed from the area or protected from the heat before work is begun which involves welding, cutting, or heating.

(h) *Work in confined spaces.* (1) Welders and cutters, their assistants and helpers, and all other employees present in a confined space shall be protected from hazards associated with inadequate ventilation such as, but not limited to, heat stress and exposure to toxic substances.

(2) When welding, cutting, or heating must be performed in areas immediately dangerous to life or health (IDLH), only positive pressure, self-contained breathing apparatus or airline respirators approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH) shall be used.

(3) When welding, cutting, or heating in confined spaces, all cylinders (except the small portable hand-held type) and welding power sources shall be located outside of the confined spaces.

(4) When welding, cutting, or heating is done over or adjacent to any confined space, employees shall be made aware of the respiratory hazards in the adjacent space and shall not enter those spaces without taking the necessary precautions of paragraph (h)(1) of this section.

(5) When any work is performed in a confined space or when an employee is working alone in an isolated location, frequent checks shall be made to ensure the safety of the employees.

(6) Where welding operations are carried on in confined spaces and where welders and helpers are provided with hose masks, hose masks with blowers or self-contained breathing apparatus

approved by MSHA or NIOSH, an employee shall be stationed on the outside of such confined spaces to ensure the safety of those employees within the confined space.

(7) When work is performed in confined spaces with atmospheres that are immediately dangerous to life or health, an attendant stationed outside the confined space shall have an approved positive pressure, self-contained breathing apparatus, or airline respirator with emergency escape provisions, immediately available for rescue operations.

(8) Torch valves shall be closed and the supply of fuel gas and oxygen to the torch shall be shut off at a point outside the confined space whenever the torch is not to be used by the welder or cutter for a short period of time (such as during extended breaks or lunch hours). The torch and hose shall be removed from the confined space whenever the torch is not to be used for a substantial period of time (such as overnight, or when the welder or cutter temporarily changes job assignment and leaves the work area), or when the equipment is to be left behind for other workers during a change of shift.

§ 1915.53 *Oxyfuel gas welding and cutting.*

(a) *Oxygen use.* (1) Oxygen cylinders, cylinder valves, couplings, regulators, hose, and apparatus shall be kept free from oil and greasy substances.

(2) Jets of oxygen shall not be permitted to strike oily surfaces, greasy clothing, or to enter fuel oil or other storage tanks.

(3) Oxygen cylinders, equipment, pipelines, or apparatus shall not be used interchangeably with any other gas.

(b) *Attachments for gas mixing.* No device or attachment facilitating or permitting mixtures of air or oxygen with flammable gases prior to consumption shall be permitted except at burners or torches, unless such a device is specifically for this purpose.

(c) *Torches.* (1) Connections shall be checked and assured to be gas tight after assembly and before lighting the torch. A flame shall not be used for checking for gas leaks.

(2) Torch heads shall be kept clean and free from obstruction.

(3) Hoses shall be purged individually before lighting the torch for the first time each day.

(4) Hoses shall not be purged in confined spaces or near ignition sources.

(5) Matches, cigarette lighters, or hot-work shall not be used to light torches.

(d) *Hose and hose connections.* (1) Hoses for fuel gas, oxygen, inert-gas, and air shall be easily distinguishable from each other.

(2) Oxygen and fuel gas hoses shall not be interchangeable.

(3) Single hose having more than one gas passage and which separates the gas passages by a wall whose failure would permit the flow of one gas into the other gas passage shall not be used.

(4) When parallel sections of oxygen and fuel gas hose are taped together for convenience and to prevent tangling, the hose shall not be taped in such a way as to obscure tears, cuts, abrasions, and other such physical defects that may cause the hose to fail.

(5) All hose carrying any gas or substance which can ignite or enter into combustion shall be inspected for leaks at the beginning of each shift.

(6) Hose which has been subjected to flashback or which shows evidence of severe wear or damage shall not be used until tested without failure to twice the normal operating pressure, but in no case less than 200 psi (1380 kPa).

(7) Oil-free air or oil-free inert gas shall be used for testing hose and hose connections.

(8) Hose couplings shall be of the type that cannot be unlocked or disconnected by means of a straight pull without rotary motion.

(9) Containers used for stowage of gas hose shall be ventilated to prevent the buildup of hazardous concentrations of gas.

(e) *Gauges and pressure reducing regulators.* (1) Pressure reducing regulators shall be marked or labeled for use with specific gases and pressures and shall be used only for the gas and pressures for which they are identified.

(2) Regulators shall be drained of oxygen before they are attached to a cylinder or manifold, or before the cylinder valve is opened.

(3) Gauges used for oxygen service shall be marked: "USE NO OIL."

(f) *Cylinders.* (1) No one shall refill a cylinder except the owner of the cylinder, or a person authorized by the owner of the cylinder.

(2) No person other than the gas supplier shall mix gases in a cylinder, transfer gases into a cylinder, or transfill gases from one cylinder to another.

(3)(i) The contents of compressed gas cylinders shall be legibly marked on the cylinder.

(ii) Markings shall be applied so that they can not be easily removed.

(iii) If a cylinder is not marked, or if markings have been removed or obliterated, the cylinder shall not be used and shall be immediately removed from service.

(4) Compressed gas cylinders shall be equipped with inlet or outlet connections that are designed for, and

compatible with, the equipment to be attached to them.

(5) All cylinders with a water weight capacity over 30 pounds (13.6 kg) shall either be equipped with a collar or recess to protect the valve or have a valve protection cap attached.

(6) Cylinders shall be stored where they will not be exposed to physical damage.

(7) Cylinders shall be stored in assigned places where they will not be knocked over by passing employees or moving objects.

(8) Cylinders shall be secured in storage to prevent their falling.

(9) Cylinders in storage shall be separated from hazardous materials, flammable and combustible liquids, and from easily ignited materials, such as wood, paper, packaging material, oil, and grease, by at least 20 feet (6.1 m), or by a noncombustible barrier at least five feet (1.6 m) high having a fire resistance of at least one-half hour.

(10) Oxygen cylinders stored in outside acetylene generator houses shall be separated from the generator or carbide storage rooms by a noncombustible gas-tight partition, without openings, having a fire resistance of at least one hour.

(11) Oxygen shall not be stored inside acetylene generator rooms.

(12) Fuel and oxygen cylinders shall be placed valve end up.

(13) Cylinders shall not be dropped, struck, or permitted to strike objects in a manner which may damage the cylinder, valve, or safety devices.

(14) Crow bars and other levers shall not be used under valves or valve protection caps to pry cylinders loose when frozen to the ground, other cylinders or other objects.

Note.—The use of warm (not boiling) water is recommended for unfreezing.

(15) Cylinders shall not be used as rollers or supports.

(16) Employees shall not disturb or tamper with cylinder safety devices.

(17) Cylinder valves shall be closed before moving cylinders.

(18) If cylinders are capable of having valve protection caps attached, valve protection caps shall always be in place and hand-tight, except when cylinders are in use or connected for use.

(19) Valve protection caps shall not be used for lifting or hoisting cylinders.

(20) A cradle or suitable platform shall be used when transporting cylinders by a crane or derrick. Slings or electromagnets shall not be used for this purpose.

(21) Cylinders shall be secured in an upright position, valve end up, when they are transported by motor vehicle.

(22) The cylinder valve shall be closed when cylinders are to be moved with regulators attached and the cylinders shall be secured in position if they are moved on a special carrier.

(23) Compressed gas shall not be used from cylinders without reducing the pressure through a suitable regulator attached to the cylinder valve or manifold, unless the equipment to which the cylinder is connected is designed to withstand full cylinder pressure.

(24) Acetylene shall not be utilized for welding, cutting, or heating at a pressure in excess of 15 psig (103 kPa gauge pressure) or 30 psia (206 kPa absolute pressure).

Note.—This requirement does not apply to storage of acetylene dissolved in a suitable solvent in cylinders manufactured and maintained according to Department of Transportation requirements, or to acetylene for chemical use.

(25)(i) Before connecting a regulatory to a cylinder valve, the valve outlet shall be wiped clean and the valve shall be opened momentarily and closed immediately ("cracked").

(ii) The valve shall be cracked while the employee is standing to one side of the outlet.

(iii) A fuel-gas cylinder valve shall not be cracked near other welding work or near sparks, flame, or other possible sources of ignition.

(26) The following procedure shall be followed after a regulator is attached to an oxygen cylinder:

(i) Engage the adjusting screw and open the downstream line to drain the regulator of gas, then

(ii) Disengage the adjusting screw and open the cylinder valve slightly so that the regulator cylinder pressure gauge pointer moves up slowly before opening the valve all the way.

(iii) Employees shall stand to one side of the regulator and not in front of the gauge faces when opening the cylinder valve.

(27) A hammer or wrench shall not be used to open cylinder valves that are fitted with hand wheels.

(28) Cylinders not having fixed hand wheels to operate the valve shall have keys, handles, or non-adjustable wrenches in place on the valve stems while these cylinders are in service.

(29) When a high-pressure (non-liquefied) gas cylinder is in use, the valve shall be opened fully in order to prevent leakage around the valve stem.

(30) An acetylene cylinder valve shall not be opened more than one and one-half turns, and preferably no more than three-fourths of a turn.

(31) Nothing shall be placed on top of a cylinder when it is in use which could damage the safety device or interfere with the quick closing of the valve.

(32) Cylinder valves shall be closed when work is finished.

(33) Before a regulator is removed from a cylinder, the cylinder valve shall be closed and the gas released from the regulator.

(34) A suitable cylinder truck, chain, or other steadying device shall keep cylinders from being knocked over while they are in use.

(35) If cylinders cannot be kept far enough away from welding or cutting operations such that sparks, hot slag, and flame will not reach them, fire resistant shields shall be used to prevent contact between the cylinder and heat source.

(36)(i) Cylinders shall not be placed where they might become part of an electrical circuit.

(ii) Cylinders shall be kept away from equipment or structures that might be used for grounding electric circuits for arc welding machines.

(iii) The tapping of electrodes against a cylinder is prohibited.

(iv) Striking an arc on cylinders is prohibited.

(37) Cylinders shall not be placed in a location where they would be subject to open flame, hot metal, or other sources of high heat.

(38) The temperature of the cylinder contents shall not be allowed to exceed 130 °F (54 °C).

(g) *Cylinder emergencies.* If a leaky valve, fuse plug, safety device, or other leak is found around the valve stem of a fuel gas cylinder, the cylinder shall be moved to a safe location outdoors, away from any source of ignition, tagged in accordance with 29 CFR 1910.145(f) with the signal word "DANGER," and a warning or instruction message, such as, "KEEP FLAME AWAY." The gas supplier shall also be advised of the defect.

(h) *Fuel gas manifolds—(1) Indoors, less than 3,000 cubic feet capacity.* (i) Except as provided in paragraph (i)(2) of this section, fuel gas cylinders connected to one manifold inside a building shall be limited to a total gas capacity of 3,000 cubic feet (84 cubic meters) of acetylene or non-liquefied gas, or a total water capacity of 735 pounds (334 kg) for liquefied petroleum (LP) gas or stabilized methylacetylene propadiene.

Note.—A water capacity of 735 lb (334 kg) is equivalent to about 369 lb (140 kg) of propane, 368 lb (167 kg) of methylacetylene propadiene, stabilized, or 375 lb (170 kg) of butane.

(ii) When more than one such manifold with connected cylinders is located in the same room, the manifolds shall be at least 50 feet (15 m) apart or separated by a barrier of noncombustible material at least five feet (1.5 m) high having a fire resistance rating of at least one-half hour.

(2) *Exceeding 3,000 cubic feet.* Fuel gas cylinders connected to one manifold having a total gas capacity exceeding 3,000 cubic feet (84 cubic meters) of acetylene or non-liquefied gas, or a total water capacity of 735 pounds (334 kg) for LP gas or methylacetylene propadiene, stabilized, shall be located outdoors, or in a separate building or room constructed in accordance with ANSI/NFPA 51-1983, *Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes*, which is incorporated by reference.

(i) *High pressure oxygen manifolds capacity limits and locations.* (1)(i) Oxygen manifolds shall not be located in an acetylene generator room.

(ii) Oxygen manifolds shall be separated from fuel gas cylinders or combustible materials in the same room by a minimum distance of 20 feet (six meters), or by a barrier of noncombustible material at least five feet (1.5 meters) high having a fire resistance rating of at least one-half hour.

(2)(i) Except as provided in paragraph (i)(3) of this section, high pressure oxygen cylinders connected to one manifold shall be limited to a total gas capacity of 6000 cubic feet (168 cubic meters).

(ii) If more than one such manifold with connected cylinders is located in the same room the manifolds shall be at least 20 feet (six meters) apart.

(3) A high pressure oxygen manifold to which cylinders having an aggregate capacity of more than 6000 cubic feet (168 cubic meters) of oxygen are connected shall be located:

(i) Outdoors, or

(ii) In a separate building constructed of noncombustible or limited combustible materials, or

(iii) In a separate room constructed of noncombustible or limited combustible materials having a fire resistance rating of at least one-half hour, or in an area having no combustible materials within 20 feet (six meters) of the manifold, as long as the building it is located in is not associated with the production of acetylene, the storage of calcium carbide, or the storage and manifolding of fuel gases used in welding and cutting.

(j) *Low pressure oxygen manifolds.* (1) Except as provided in paragraph (j)(2) of this section, low pressure oxygen cylinders connected to one manifold shall be limited to a total gas capacity of 12,000 cubic feet (336 cubic meters).

(2)(i) If more than one such manifold with connected cylinders is located in the same room, the manifolds shall be at least 50 feet (15 meters) apart.

(ii) An oxygen manifold to which low pressure cylinders having an aggregate capacity of more than 12,000 cubic feet (336 cubic meters) of oxygen are connected shall be located:

(A) Outdoors, or

(B) In a separate building constructed of noncombustible or limited combustible, or

(C) In a separate room constructed of noncombustible or limited combustible materials having a fire resistance rating of at least one-half hour, or in an area having no combustible materials within 20 feet (six meters) of the manifold, as long as the building it is located in is not associated with the production of acetylene or the storage and manifolding of gases used in welding and cutting.

(k) *Manifold requirements.* (1) High pressure manifolds, for use with cylinders having DOT service pressures exceeding 250 psig (1700 kPa gage), shall be provided with acceptable pressure-regulating devices.

(2) Low pressure manifolds, those for use with cylinders having DOT service pressure not exceeding 250 psig (1700 kPa gage), shall be constructed for use at a pressure of 250 psig shall have a minimum bursting pressure of 1000 psig (6900 kPa gage); and shall be protected by a safety relief device which will relieve at a maximum pressure of 500 psig (3440 kPa gage).

(3) Hose and hose connections shall have a minimum bursting pressure of 1000 psig (6900 kPa gage).

(4) The assembled low pressure manifold, including leads, shall be tested and proved gas-tight at a pressure of 300 psig (2070 kPa gage). The fluid used for testing oxygen manifolds shall be oil-free and not combustible. Flames shall not be used to test for leaks.

(5) A caution sign that warns employees of a low-pressure manifold shall be conspicuously posted at each low pressure manifold and shall direct that cylinders with a pressure above 250 psig (1700 kPa gage) shall not be connected to the manifold.

(6) Each fuel-gas cylinder lead shall be provided with a back-flow check valve.

(7) When acetylene cylinders are coupled, acceptable flash arresters shall be installed between each cylinder and the coupler block. However, when used

outdoors, and where no more than three cylinders are coupled, one flash arrester installed between the coupler block and regulator is acceptable.

(8)(i) Portable outlet headers shall not be used indoors or on board a vessel except for temporary service where the conditions preclude a direct supply from outlets located on the service piping system.

(ii) Each outlet on the service piping from which oxygen or fuel-gas is withdrawn to supply a portable outlet header shall be equipped with a readily accessible shutoff valve.

(iii) Each service outlet on portable outlet headers shall be provided with a valve assembly that includes a detachable outlet seal cap, chained or otherwise attached to the body of the valve.

(iv) Master shutoff valves for both oxygen and fuel gas shall be provided at the entry end of the portable outlet headers.

(v) Portable outlet headers for fuel gas service shall be provided with a hydraulic back-pressure valve appropriate for the system and installed at the inlet and preceding the service outlets, unless an appropriate pressure-reducing regulator, back-flow check valve or hydraulic back-pressure valve is installed at each outlet. Outlets provided on headers for oxygen service may be fitted for use with pressure-reducing regulators or for direct hose connection.

(vi) Portable outlet headers shall be provided with frames which will support the equipment securely in the correct operating position and protect them from damage during handling and operation.

(9) Cylinder manifolds shall be installed under the supervision of a competent person familiar with the proper practices to be followed during construction, installation, and use of this equipment.

§ 1915.54 Arc welding and cutting.

(a) *Electric shock hazards.* (1) Employees shall be protected from electrical shock by wearing dry protective clothing when welding or cutting with covered electrodes using alternating current or single-phase transformer-rectifier arc welding machines under electrically hazardous conditions due to wet surroundings, or warm surroundings where perspiration is a factor, or because the work is in a location that is cramped or restricts movement such that there is a high risk of contact with live electrical parts.

(2) Contact with live electrical parts shall be prevented by insulating conductive parts near employees.

(3) The following limits shall not be exceeded:

(i) *Alternating-current machines.* (A) Manual arc welding and cutting—80 volts.

(B) Automatic (machine or mechanized) arc welding and cutting—100 volts.

(ii) *Direct-current machines.* (A) Manual arc welding and cutting—100 volts.

(B) Automatic (machine or mechanized) arc welding and cutting—100 volts.

(4) Control apparatus on all types of arc welding machines shall be enclosed except for the operating wheels, levers, or handles.

(5) Input power terminals, tap change devices and live metal parts connected to input circuits shall be completely enclosed and accessible only by means of tools.

(6) Welding lead terminals intended to be used exclusively for connection to work and connected to the grounded power source enclosure, shall be smaller in diameter (at least two AWG sizes higher) than the grounding conductor, and the terminal shall be marked to indicate that it is grounded.

(7) Terminals for welding leads shall be protected from accidental electrical contact by employees or by employee-operated equipment that could conduct electricity, such as vehicles and crane hooks, lines, or booms, by the use of dead-front receptacles for plug connections; by locating terminals in recessed openings or under a hinged cover; by using heavy insulating sleeves or by other equivalent means.

(8)(i) No connections for portable control devices, such as push buttons to be carried by the employee, shall be connected to an a.c. circuit of higher than 120 volts.

(ii) Exposed metal parts of portable control devices operating on circuits above 50 volts shall be grounded by a grounding conductor in the control cable.

(9) Autotransformers or a.c. reactors shall not be used to draw welding current directly from any primary a.c. power source having a voltage exceeding 80 volts.

(b) *Equipment.* (1) *Manual electrode holders.* (i) Only manual electrode holders that are specifically designed for arc welding and cutting and that are of a capacity capable of safely handling the maximum rated current required by the electrodes shall be used.

(ii) Any current-carrying parts passing through the portion of the holder which the employee grips and the outer surfaces of the jaws of the holder shall

be fully insulated against the maximum voltage encountered to ground.

(iii) Defective electrode holders shall be removed from service.

(2) *Welding cables and connectors.* (i) All arc welding and cutting cables shall be completely insulated, flexible, and capable of handling the maximum current requirements of the work in progress, taking into account the electrical duty cycle under which the employee is working.

(ii) Only cable free from repair or splices for a minimum distance of ten feet (3 m) from the cable end to which the electrode holder is connected shall be used, unless the cable has standard insulated connectors or splices with insulating quality at least equal to that of the cable.

(iii) When it becomes necessary to connect or splice lengths of cable one to another, substantial insulated connectors of a capacity at least equal to that of the cable shall be used.

(iv) If connections are made by means of cable lugs, the lugs shall be securely fastened together to give good electrical contact and the exposed metal parts of the lugs shall be completely insulated.

(3) *Ground returns and machine grounding.* (i) The workpiece or metal upon which the employee welds shall be grounded.

(ii) A ground return cable shall have a safe current carrying capacity equal to or exceeding the specified maximum output capacity of the arc welding or cutting unit which it services. When a single ground return cable services more than one unit, its safe current carrying capacity shall equal or exceed the total specified maximum output capacities of all the units which it services.

(iii) Building frames, conduits, pipelines or other metal structures may be used as part of the ground return circuit, provided that continuity to ground is ensured, the safe current carrying capacity is at least equal to that required in paragraph (b)(3)(ii) of this section, and the pipe or structure does not contain gases other than air, flammable liquids, or electrical circuits.

(iv) When a pipeline or other metal structure is used as a ground return circuit, it shall be determined that electrical contact exists at all joints. The generation of an arc, sparks or heat at any point in the pipeline or structure shall cause rejection of the structure as a ground circuit.

(v) When a structure or pipeline is continuously employed as a ground return circuit, all joints shall be bonded, and periodic inspections of the joints shall be conducted to ensure that no condition of electrolysis or fire hazard exists because of such use.

(vi) The frames of all arc welding and cutting machines shall be grounded either through a third wire in the cable containing the circuit conductor or through a separate wire which is grounded at the source of the current.

(vii) Grounding circuits, other than those incorporating a vessel's metal frame or structure, shall be checked to ensure that the circuit between the ground and the grounded power conductor has a low enough resistance to permit the flow of sufficient current to cause the fuse or circuit breaker to interrupt the current.

(viii) All ground connections shall be inspected to ensure that they are mechanically strong and capable of safely carrying current at least equal to that required in paragraph (b)(3)(ii) of this section.

(c) *Operating instructions.* (1) Welding machines shall not be used if they leak cooling water, shielding gas, or engine fuel.

(2) When an employee has occasion to leave a work area or stop work for any appreciable time, the electrode holder shall be de-energized by turning off the machine or the holders shall be disconnected from the welding lead.

(3) When the machine is moved, the input power supply to the equipment shall be unplugged.

(4) Electrodes shall be removed from holders when not in use to eliminate the danger of electrical contact with persons or conducting objects.

(5) Electrode holders not in use shall be placed so that they cannot make electrical contact with employees, conducting objects, flammable or combustible liquid containers, or compressed gas cylinders.

(6) Guns of semi-automatic welding machines not in use shall be placed so that the gun switch cannot be operated accidentally.

(7) Employees who operate arc welding or cutting equipment shall be instructed how to avoid electrical shock while operating such equipment.

(8) Hot electrode holders shall not be cooled by immersion in water.

(9) Water-cooled holders and guns shall not be used if any water leak or condensation occurs.

(10) Arc welding machines shall be electrically deenergized whenever the tungsten electrodes in gas tungsten arc electrode holders are changed.

(11) Other employees working in, or passing through, the vicinity of arc welding operations shall be protected from exposure to direct rays of the arc by means of booths, shields, goggles, or other equivalent protection.

(d) *Maintenance.* (1) Commutators shall be kept clean to prevent excessive flashing.

(2) Arc welding machines used outdoors shall be protected from rain, snow or other inclement weather.

(3) Arc welding machines which have become wet shall be thoroughly dried and properly tested before being used again in order to prevent employee shock.

§ 1915.55 Resistance welding.

(a) *Guarding.* (1) Control initiating devices on resistance welding equipment, such as push buttons, foot switches, retraction devices, and dual schedule switches on portable guns, shall be arranged or guarded to prevent an employee from activating them inadvertently.

(2) All chains, gears, operating linkages, and belts associated with welding equipment shall be arranged or guarded to prevent employee contact.

(3) Point-of-operation guards shall be provided and used where an employee's hands or fingers can enter the machine's operation zone.

(4) All suspended portable welding gun equipment, with the exception of the gun assembly, shall be equipped with a support system capable of supporting the total impact load in the event of failure of any component of the supporting system.

(5) Moving holder mechanisms entering the gun frame shall have sufficient clearance to prevent the shearing of the operator's fingers placed on the operating movable holder, or be provided with adequate guards.

(b) *Electrical.* (1) All external weld-initiating control circuits shall operate at 120 volts root mean square (rms) or less for stationary equipment, and 36 volts or less for portable equipment.

(2)(i) Resistance welding equipment, and control panels containing capacitors used for stored energy resistance welding involving voltages over 550 rms volts, shall be insulated and protected by complete enclosures.

(ii) All doors of these enclosures shall be provided with interlocks or contacts wired into the control circuits that are designed to interrupt power and short circuit all capacitors when the door panel is open.

(iii) A manually operated switch or other equivalent device shall be installed in addition to the mechanical interlocks or contacts required in paragraph (b)(2)(ii) of this section, as an added safety measure to assure absolute discharge of all capacitors.

(c) *Locks and interlocks.* (1) All doors and access panels on resistance welding

machines and control panels that are accessible at production floor level, shall be kept locked or interlocked to prevent access by unauthorized employees to live portions of the equipment.

(2) Control panels located on overhead platforms or in separate rooms shall be locked, interlocked, or guarded by a physical barrier and warning signs, and the panels shall be kept closed when the equipment is not being serviced.

(d) *Spark shields.* Welding equipment operators and other employees working in, or passing through, the work area shall be protected from flying sparks by the installation of guards, shields or curtains of suitable fire-resistant material, or by the use of appropriate personal protective equipment. For flash welding equipment, flash guards of fire-resistant material shall be provided to control flying sparks and molten metal.

(e) *Stop buttons.* One or more safety emergency stop buttons shall be provided on all welding machines that require three seconds or more to complete a sequence and come to a stop, or have mechanical movements that can be hazardous to employees if guards are removed, and when the installation and use of these emergency stop buttons will not in themselves create additional hazards to employees.

(f) *Grounding.* The welding transformer secondary circuit shall be grounded by one of the methods below:

(1) Permanent grounding of the welding secondary circuit, or

(2) Connecting a grounding reactor across the secondary circuit winding with reactor tap(s) to ground, or

(3) On non-portable machines, arranging for an isolation contactor to open both sides of the line to the primary circuit of the welding transformer.

(g) *Static safety devices.* (1) Electrically interlocked safety devices such as, but not limited to, pins, blocks, or latches, shall be installed on large welding machines incorporating a movable platen or welding head.

(2) The device(s) shall prevent movement of the platen or head under static load.

(3) Regardless of the number of devices varying with machine size or accessibility, each device alone shall be capable of sustaining the full static load involved.

[FR Doc. 88-26999 Filed 11-28-88; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1915

[Docket No. S-044]

Access and Egress Requirements for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing access and egress (including stairways and ladders). The standards proposed for revision regulate the design, construction, and use of means of access and egress to vessels, buildings, and other structures in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard employment access and egress standards and the appropriate general industry access and egress standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address the hazards of access and egress.

The specific topic of access and egress is currently addressed in Subpart E of the current Shipyard Employment Standards, along with the topics of scaffolds, ladders, and other walking/working surface considerations. To format the rules into a more logical grouping of topics, this and related actions would retain coverage of stairways, ladders and other access and egress concerns in Subpart E, and would relocate fall protection and scaffolds from the current Subpart E to a new Subpart M—Fall Protection, and a new Subpart N—Scaffolds.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-044, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-4647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this Notice of Proposed Rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered by Parts 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard

employments not specifically addressed in the consolidated Part 1915 (see 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the

present specification requirements. In these situations, OSHA sets forth the requirement in performance-oriented language, and relocates the specification language requirements to an appendix. The appendices are discussed in more detail below. Specification requirements would be used in the main text only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards, so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

The topic "access and egress" is currently covered by 29 CFR Part 1915, Subpart E—Scaffolds, Ladders, and Other Working Surfaces; 29 CFR Part 1910, Subpart D—Walking-Working Surfaces; and 29 CFR Part 1910, Subpart E—Means of Egress. Consolidating these three subparts into one subpart would result in a large, cumbersome subpart because of the wide range of topics covered. Therefore, OSHA is proposing to divide the consolidated Part 1915 standards into three subparts. The proposed subparts would be Subpart E—Access and Egress; Subpart M—Fall Protection; and Subpart N—Scaffolds. This reformatting, in and of itself, would not create nor delete any requirements.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions dealt with in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to access and egress.

Section 1915.71 Scope, application, and definitions applicable to this subpart.

Section 1915.71(a)—Scope and application. This paragraph would outline the scope and application of the entire Subpart E. The proposal would

apply to all workplaces and operations found in shipyards, including those aboard vessels and subassemblies of vessels, except as follows: Access/egress requirements for employees involved in the construction, alteration, repair (including painting and decorating) and demolition of shore facilities would continue to be addressed by 29 CFR Part 1926—Construction Industry Standards, which are not affected by this proposal; and access/egress requirements for employees on scaffolds would be as provided in proposed Subpart N—Scaffolds. This proposal would incorporate all applicable provisions of 29 CFR Part 1910, Subparts D and E, related to access and egress, and those subparts would no longer apply to access and egress considerations in shipyard workplaces and operations.

Certain of the proposed standards contain "grandfather" provisions. These provisions would allow employers to continue using facilities and equipment which do not meet the proposed requirements, but which do meet the regulations presently in effect. Thus, specified facilities which are currently meeting OSHA criteria would not have to be replaced or altered to meet the new criteria. However, all new facilities and equipment built or installed after the effective date of this subpart would have to meet the proposed criteria. For example, proposed paragraph § 1915.85(c)(3) would require stairrails to be at least 36 inches high, whereas the existing rule requires such rails to be at least 30 inches high. Under the proposed rules, employers would not have to re-install stairrails in existing stairways. However, all stairways created or installed after the effective date of this standard would have to have stairrails located at the new height.

In the proposed rules, all "grandfathering" provisions are indicated in brackets ([]) immediately following the new criteria. If a requirement does not contain a bracketed provision, then no "grandfathering" exception is made. In the Specific Issues section of this preamble, OSHA requests comments as to whether the provisions proposed for "grandfathering" should indeed be "grandfathered," and whether or not other provisions should be "grandfathered."

Section 1915.71(b)—Definitions applicable to this subpart. This paragraph lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standards, however, some have been reworded for

uniformity or clarity. The following words have been added or have been changed substantively from the existing definitions:

"Cleat." In addition to the § 1910.21 definition that this is a ladder cross-piece used for stepping, this term also is used to describe transverse strips of material such as wood or metal used on inclined surfaces to provide footing.

"Double cleat ladder." This term describes three rail ladders which are used to provide simultaneous two-way access for employees.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definition makes clear that the employer must demonstrate that all alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Failure." This word is used in performance-oriented paragraphs such as § 1915.85(c)(5) which addresses stairrail strength. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Fixed ladder." This term is used to describe shoreside permanently installed side-step and through-type ladders used in buildings and structures. Such ladders do not include any ladder permanently installed aboard a vessel or vessel section.

"Handrail." The proposed definition explains that handrails are used to provide employees with a handhold for support. The proposed definition deletes the existing language which limits handrails to bars or pipes "supported on brackets from a wall or partition * * * (to provide) a handhold in case of tripping." The new definition recognizes that handrails are not limited in form to wall- or partition-mounted bars or pipes. For example, the top rail of a stairrail system may serve as a handrail when installed according to paragraph § 1915.85(c)(7).

"High hazard contents" and "ordinary hazard contents." These terms are used to describe conditions where fire or other emergency procedures are necessary. They are the same definitions as existing § 1910.35(f) and (g), except the existing phrase "to be feared" would be replaced by the word "likely."

"In dry dock." This term is used to describe a vessel's location when it is in a graving dock, basin, dry dock (including floating dry docks), or on a marine railway.

"Jacob's ladder." This term is used to describe a unique type of ladder with flexible siderails commonly found in shipyards.

"Ladder safety device." This term defines such devices as systems, other than cages or wells, used in conjunction with a ladder, which will limit an employee's fall from a ladder without that person having continually to manipulate the device or any part thereof. This is a change from the existing definition in § 1910.21(e)(13), which describes such devices as those which eliminate or reduce the possibility of falls on ladders. The proposal recognizes that such devices do not function by eliminating or reducing the possibility of falls; they do, however, minimize or reduce the actual fall distance traveled.

"Lower levels." This term is used to describe the areas to which an employee could fall. The definition does not apply to the surface on which the employee is performing work duties.

"Maximum intended load." This is a new term used in paragraphs §§ 1915.86(a)(1) and 1915.87(b)(2) to clarify the types of loads which must be considered when building a ladder or a ramp, and is used in paragraph § 1915.86(b)(3) to limit the amount of load which may be placed on a ladder.

"Means of access." This term is used in lieu of the following list of access facilities: Ladders, stairways, ramps, runways, gangways, walkways, catwalks, dockboards, and personnel hoists.

"Portable ladder." This term is used to distinguish ladders that can be readily moved or carried, from fixed ladders (those which are an integral part of a building or structure).

"Riser height." This term replaces the term "rise." There is no change to the definition, for the purposes of this standard, the term "tread" used in the definition includes landings.

"Single cleat ladder." This term is used to describe two rail ladders.

"Stairrail system." This term replaces the existing term "stair railing," which is often used to describe only the top member of a railing system. Stairrail systems protect employees from falling off the side of a stairway, and may consist of a rail system (toprail, midrail, posts, balusters, or similar components) or may be a wall. Handrails are the components used to provide grab holds while climbing or descending stairs. Handrails are normally mounted on the side of stairrail systems, but when installed according to the height criteria of paragraph § 1915.85(c)(7), may be the same component as the topmost piece of a stairrail system (i.e., they may be the

toprail in a rail system, or the top edge of a wall section).

"Unprotected sides and edges." This is a new term and defines such areas as those where there is no wall or guardrail system 39 inches or more in height, or where there is no stairrail system 36 inches or more in height. This definition is consistent with the term as used in the proposed Subpart M—Fall Protection, § 1915.201.

"Vessel section." This term is used to clarify the areas where certain rules apply. It means all sub-assemblies, modules, and other components of a vessel which are not directly attached to the vessel because of the state of construction, repair, or breaking.

Section 1915.72 General requirements for means of access.

This section specifies where stairways, ladders, ramps, runways, gangways, walkways, catwalks, or personnel hoists are to be provided in order for employees to have safe means of access between levels.

Section 1915.72(a)—Where required. This paragraph would require stairways, ladders, ramps, runways, gangways, walkways, catwalks, or personnel hoists to be provided at all personnel points of access between working levels which are 19 inches or more apart in elevation, and where operations require regular travel between the working levels (including access to operating platforms on all equipment which require attention routinely during operations.) This is essentially the same provision as existing rule § 1910.24(b) except the proposed rule applies to vessel access as well as shoreside access. The 19-inch criterion is added to clarify the amount of elevation difference which must be present before the rule would apply. This amount is equivalent to twice the maximum stairway step spacing presently allowed by § 1910.24(e). Spiral stairways would be allowed only where they provide the only practical means of access. This is essentially the same limitation as in § 1910.24(b).

Section 1915.72(b)—When required. This paragraph would require all systems and duties required by the proposal to be provided and installed, and performed, respectively, before employees begin work from the work surface where protection is required. This requirement is implied by the existing provisions of Subpart D of Part 1910 and Subpart E of Part 1915, but is not explicitly set forth. The proposal would clarify that these provisions are to be met before work begins in an area.

Section 1915.73 Access to vessels.

This section sets forth the requirements for access to vessels, and is based on the provisions currently contained in § 1915.74.

Section 1915.73(a)—Access to vessels afloat. This paragraph would apply to all vessels (except floating drydocks) afloat, which are not lying abreast of another vessel, and which are not in drydock. The following table lists the proposed provisions of paragraph § 1915.73(a), which would not be substantively changed from the corresponding requirements in the existing paragraphs listed; except as noted:

Proposed provision	Existing provision
§ 1915.73(a)(1).....	§ 1915.74(a)(1)
§ 1915.73(a)(2).....	§ 1915.74(a)(4)
§ 1915.73(a)(3).....	§ 1915.74(a)(5)
§ 1915.73(a)(4).....	§ 1915.74(a)(6)
§ 1915.73(a)(5).....	§ 1915.74(a)(7)
§ 1915.73(a)(6).....	§ 1915.74(a)(8)
§ 1915.73(a)(7).....	§ 1915.74(a)(9)
§ 1915.73(a)(9).....	§ 1915.74(a)(11)
§ 1915.73(a)(10).....	§ 1915.74(a)(12)

The gangway, ladder, Jacob's ladder, and stair criteria presently contained in paragraphs § 1915.74(a)(1) and (a)(9) are not repeated in proposed paragraphs § 1915.73(a)(1) and (a)(7). Instead, these requirements would be moved to proposed paragraphs § 1915.85 *Stairways*, § 1915.86 *Ladders*, and § 1915.87 *Gangways, ramps, walkways, and catwalks*.

The existing § 1915.73(a)(2) and (a)(3) requirements relating to guardrail systems on gangways and turntables would be addressed in proposed Subpart M—Fall Protection.

Paragraph (a)(8) of § 1915.73 would provide that obstructions not be laid on or across means of access. This is the same requirement as § 1915.74(a)(10) except the term "means of access" replaces the existing term "gangway." OSHA believes that no obstructions should be placed on or across any means of access.

Section 1915.73(b)—Access to vessels in drydock, and between vessels. This paragraph would apply to all vessels which are drydocked, and to all vessels lying abreast of each other whether afloat or drydocked.

The following table lists the proposed provisions of paragraph § 1915.73(b) which would not be substantively changed from the corresponding requirements in the existing paragraphs listed, except as noted:

Proposed provision	Existing provision
§ 1915.73(b)(1).....	§ 1915.74(b)
§ 1915.73(b)(2).....	§ 1915.74(b)
§ 1915.73(b)(3).....	§ 1915.74(b)
§ 1915.73(b)(4).....	§ 1915.74(b)

The gangway, ladder, Jacob's ladder, and stair criteria presently required by paragraph § 1915.74(b) are not repeated in proposed paragraph § 1915.73(b). Instead, these requirements would be moved to proposed standards § 1915.85 *Stairways*, § 1915.86 *Ladders*, and § 1915.87 *Gangways, walkways, ramps, and catwalks and dockboards (bridge plates)*.

Paragraph (b)(3) of § 1915.73 would provide that obstructions not be laid on or across means of access. This is the same provision as required by § 1915.74(b) except the term "means of access" replaces the existing term "gangway." As noted above, OSHA believes that no obstruction should be placed on or across any means of access.

Section 1915.73(c)—Access to barges and river towboats. This paragraph would set forth the requirements for access to barges and river towboats. The following table lists the proposed provisions of paragraph § 1915.73(c) which would not be substantially changed from the corresponding requirements in the existing paragraphs listed, except as noted:

Proposed provision	Existing provision
§ 1915.73(c)(2).....	§ 1915.74(c)(2)
§ 1915.73(c)(3).....	§ 1915.74(c)(3)
§ 1915.73(c)(4).....	§ 1915.74(c)(3)
§ 1915.73(c)(5).....	§ 1915.74(c)(3)

Paragraph (c)(1) of § 1915.73 would require gangways, ramps, or walkways to be used when employees cannot step safely to or from the wharf, float, barge, or river towboat alongside the vessel. When gangways, ramps, or walkways are impracticable, then ladders shall be used. This is the same requirement as § 1915.74(c)(2) except the existing provision inadvertently omitted references to ramps and walkways.

The ramp and stair criteria presently required by § 1915.74(c)(1) and (c)(3) are not repeated in proposed paragraph § 1915.73(c). Instead, these requirements would be moved to proposed § 1915.87 *Gangways, walkways, ramps, catwalks, and dockboards (bridge plates)*, and § 1915.85 *Stairways*, respectively.

Section 1915.74 Access to drydocks and drydock wingwalls

This section would set forth the requirements for access to drydocks and

drydock wingwalls, and is based on the provisions currently contained in § 1915.75. The following table lists the proposed provisions of paragraph § 1915.74 which would not be substantively changed from the corresponding requirements in the existing paragraphs listed, except as noted:

Proposed provision	Existing provision
§ 1915.74(a).....	§ 1915.75(a)
§ 1915.74(b).....	§ 1915.75(f)

Existing provisions § 1915.75(b) through (e), which cover guardrail systems, would be relocated to proposed Subpart M—Fall Protection.

The gangway, ramp, stairway, and ladder criteria presently required by paragraph § 1915.75(a) and (f) would be moved to proposed § 1915.85 *Stairways*, § 1915.86 *Ladders*, and § 1915.87 *Gangways, ramps, walkways, and catwalks*.

Section 1915.75 Access to cargo spaces and confined spaces aboard vessels

This section would set forth the requirements for access to cargo spaces and confined spaces aboard vessels, and is based on the provisions in § 1915.76.

Section 1915.75(a)—Cargo spaces. This paragraph would set forth the access requirements for cargo spaces. Paragraph (a)(1) of § 1915.75 would require at least one safe and accessible ladder in a cargo space into which employees must enter or in which employees are working. This is essentially the same requirement as § 1915.76(a), except the proposed provision clarifies the point that ladders may not be removed as long as someone is in the space.

The following table lists the proposed provisions of paragraph § 1915.75(a) which would not be substantively changed from the corresponding requirements in the existing paragraphs listed below:

Proposed provision	Existing provision
§ 1915.75(a)(2).....	§ 1915.76(a)(4)
§ 1915.75(a)(3).....	§ 1915.76(a)(2)
§ 1915.75(a)(4).....	§ 1915.76(a)(3)
§ 1915.75(a)(5).....	§ 1915.76(a)(5)
§ 1915.75(a)(6).....	§ 1915.76(a)(5)

Section 1915.75(b)—Confined spaces. This paragraph would set forth the access requirements for confined spaces.

Paragraph (b)(1) of § 1915.75 would require more than one access opening to be provided to a shipboard confined

space in which employees are working, and in which a hazardous or explosive atmosphere can be generated by the work being performed, except where the structure or arrangement of the vessel makes this provision impractical. This is the same provision as § 1915.76(b)(1) except the term "explosive atmosphere" is added to clarify the nature of the hazards which pose a danger to employees.

In addition, the requirements of this paragraph would not apply to vessels designed in accordance with the rules of the various worldwide classification societies, or with United States Coast Guard (USCG) standards which require only one access opening, as the cutting of a second opening may violate such rules or standards.

Paragraph (b)(2) of § 1915.75 would require that when ventilation ducts must pass through an access opening to a confined space, the ducts be of a type and arrangement as to permit free passage of employees through at least one of the access openings (two openings if there are two or more access openings to the confined space). This is the same requirement as § 1915.76(b)(2), except the requirement is changed to recognize that some confined spaces only have one opening.

Sections 1915.76 through 1915.79

These sections would be reserved for future use.

Section 1915.80 and Section 1915.81 General and specific requirements for means of egress from buildings and structures

These sections would set forth the general and specific requirements for means of egress from buildings and structures. The provisions are essential to providing a safe means of egress from fire and other emergencies which occur in buildings and structures. (The provisions of these sections would not apply to vessels, vessel sections, vehicles, or other mobile equipment, however, public comment is requested on this point in the Specific Issues section of this preamble).

The proposed provisions are substantively the same provisions as existing §§ 1910.36 and 1910.37. However, as indicated in the table below, some of the provisions would be combined to reduce redundancy, and other provisions have been reworded for clarity. In addition, the proposal would delete from the main text of the subpart requirements addressing exit capacity, size, and marking, and replace them with performance-oriented requirements. The deleted provisions would be relocated to Appendix A. That

appendix would be a non-mandatory set of guidelines provided to assist employers in complying with proposed §§ 1915.80(c)(2) and 1915.81(i)(2). The guidelines of Appendix A would be based on § 1910.36(b)(1) and (2), and § 1910.37(c), (d), (f)(6), (i), and (g)(8). If an employer uses these guidelines, OSHA will treat the resulting exit as meeting the performance-oriented requirements of §§ 1915.80(c)(2) and 1915.81(i)(2). However, by making these specification provisions non-mandatory, OSHA is allowing other alternative methods to be developed that are just as satisfactory as the presently mandated methods.

The following table lists the proposed provisions and the corresponding requirements of the existing paragraphs:

Proposed provision	Existing provision
§ 1915.80(a)(1).....	§ 1910.36(b)(1), § 1910.36(c)(3)
§ 1915.80(a)(2).....	§ 1910.36(b)(4), § 1910.37(f)(1)
§ 1915.80(a)(3).....	§ 1910.36(b)(4), § 1910.37(k)(3)
§ 1915.80(a)(4).....	§ 1910.36(b)(5), § 1910.37(g)(1)
§ 1915.80(a)(5).....	§ 1910.36(b)(5), § 1910.37(f)(4), § 1910.37(g)(2)
§ 1915.80(b).....	§ 1910.36(b)(6)
§ 1915.80(c).....	§ 1910.36(b)(7)
§ 1915.80(d).....	§ 1910.36(b)(8)
§ 1915.80(e)(1).....	§ 1910.36(c)(1)
§ 1915.80(g)(2).....	§ 1910.36(c)(2)
§ 1915.80(g)(3).....	§ 1910.36(c)(3)
§ 1915.80(f)(1).....	§ 1910.36(d)(1)
§ 1915.80(f)(2).....	§ 1910.36(d)(2), § 1910.37(m)
§ 1915.81(a).....	§ 1910.37(a)
§ 1915.81(b)(1).....	§ 1910.37(b)(1)
§ 1915.81(b)(2).....	§ 1910.37(b)(2)
§ 1915.81(b)(3).....	§ 1910.37(b)(3)
§ 1915.81(b)(4).....	§ 1910.37(b)(4)
§ 1915.81(c).....	§ 1910.37(e)
§ 1915.81(d)(1).....	§ 1910.37(f)(1)
§ 1915.81(d)(2).....	§ 1910.37(f)(2)
§ 1915.81(d)(3).....	§ 1910.37(f)(3)
§ 1915.81(d)(4).....	§ 1910.37(f)(5)
§ 1915.81(e)(1).....	§ 1910.37(g)(2)
§ 1915.81(e)(2).....	§ 1910.37(g)(3)
§ 1915.81(e)(3).....	§ 1910.37(g)(4), § 1910.37(k)(2)
§ 1915.81(e)(4).....	§ 1910.37(g)(5)
§ 1915.81(f)(1).....	§ 1910.37(h)(1)
§ 1915.81(f)(2).....	§ 1910.37(h)(1)
§ 1915.81(f)(3).....	§ 1910.37(h)(2)
§ 1915.81(f)(4).....	§ 1910.37(h)(2)
§ 1915.81(g).....	§ 1910.37(j)
§ 1915.81(h)(1).....	§ 1910.37(i)(1), § 1910.37(f)(4)
§ 1915.81(h)(2).....	§ 1910.37(f)(4)
§ 1915.81(h)(3).....	§ 1910.37(i)(2)
§ 1915.81(h)(4).....	§ 1910.37(q)(3)
§ 1915.81(i)(1).....	§ 1910.37(q)(1)
§ 1915.81(i)(2).....	§ 1910.37(q)(3)
§ 1915.81(i)(3).....	§ 1910.37(q)(4)
§ 1915.81(i)(4).....	§ 1910.37(q)(5)
§ 1915.81(i)(5).....	§ 1910.37(q)(6)
§ 1915.81(i)(6).....	§ 1910.37(q)(7)
§ 1915.81(j).....	§ 1910.37(o)

Proposed provision	Existing provision
Appendix.....	§ 1910.36(b)(1), § 1910.36(b)(2), § 1910.37(c), § 1910.37(d), § 1910.37(f)(6), § 1910.37(i), § 1910.37(g)(8)

Section 1915.82 Aisles and passageways in buildings and structures

This section would set forth the requirements to keep aisles and passageways in buildings and structures clear when mechanical handling equipment is being used.

The following table lists the proposed provisions of this section which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed provision	Existing provision
§ 1915.82(a)(1).....	§ 1910.22(b)(1)
§ 1915.82(a)(2).....	§ 1910.30(b)(1)
§ 1915.82(a)(3).....	§ 1910.30(b)(1)
§ 1915.82(a)(4).....	§ 1910.30(b)(1)
§ 1915.82(b)(1).....	§ 1910.22(b)(1)
§ 1915.82(b)(2).....	§ 1910.30(b)(2)
§ 1915.82(c).....	§ 1910.22(b)(2)

Sections 1915.83 through 1915.84

These sections would be reserved for future use.

Section 1915.85 Stairways

This section would set forth the criteria for stairway construction. Whereas §§ 1915.72 through 1915.74 specify where stairways are to be provided, this section specifies how stairways are to be built. Paragraph § 1915.85(a) would specify criteria for all stairways including those used aboard vessels at points of vessel access which are currently covered by the stairway provisions of §§ 1915.74 and 1915.75. The provisions do not apply to stairways which are a part of a vessel. These provisions are based on §§ 1910.23 and 1910.24.

The following table lists the proposed provisions of this section which would not be substantively changed (except as noted below) from the corresponding requirements in the existing paragraphs listed:

Proposed provision	Existing provision
§ 1915.85(a)(1).....	§ 1910.24(g)
§ 1915.85(a)(2).....	§ 1910.24(e)
§ 1915.85(a)(3).....	§ 1910.24(f)
§ 1915.85(a)(4).....	§ 1910.23(a)(10)
§ 1915.85(a)(5).....	§ 1910.24(i)
§ 1915.85(a)(7).....	§ 1910.24(d)

Proposed provision	Existing provision
§ 1915.85(a)(8).....	§ 1910.24(f)
§ 1915.85(a)(9).....	§ 1910.24(f)
§ 1915.85(a)(11).....	§ 1910.24(b)
§ 1915.85(a)(12).....	§ 1915.74(a)(9)

Paragraph (a)(6) of § 1915.85 would require stairways to be capable of supporting, without failure, their own weight and at least five times the maximum intended load applied to the stairway, or their own weight and a concentrated moving live load of 1,000 pounds, whichever is greater. This is essentially the same requirement as § 1910.24(c), except the proposal clarifies that the total load a stairway must carry includes its own weight plus the specified live loads. In addition, the proposal would require the stairway to carry these loads without failure, that is, without breaking, separating, or exceeding the ultimate strength of component parts. Although this is implicit in the existing provisions, the proposal would clarify the point.

Paragraph (a)(10) of § 1915.85 would require all parts of stairways to be free of hazardous projections such as nails protruding from walls. This is a new rule as there is no similar existing Part 1910 or Part 1915 provision. However, OSHA does make this requirement for the construction industry in § 1926.501(c), and proposes to include it in this subpart because of the obvious danger such hazards can pose.

Section 1915.85(b)—Stairrails and handrails. This paragraph would set forth the requirements for all stairrails and handrails (except those which are part of a vessel or vessel section), and would apply regardless of the stair height above lower levels. In the following discussion, it is important to recognize the difference between the terms "stairrail" and "handrail." As briefly discussed in the definitions section above, a stairrail is a vertical barrier erected along unprotected sides and edges of a stairway to prevent employees from falling to a lower level. A handrail is a rail used to provide employees a handhold for support while climbing, descending, or resting on a stairway. On many stairways, the top of the stairrail system doubles as the required handrail.

Paragraph (b)(1) of § 1915.85 would require stairways having four or more risers to be equipped with at least one handrail, and one stairrail system along each unprotected side or edge. This is essentially the same provision as in § 1910.23(d)(1) and § 1910.24(h), except the proposed requirements do not depend upon the width of the stairway.

OSHA believes the existing width criteria are unnecessarily specific and do not significantly affect worker safety. Consequently, the width criteria of § 1910.23(d)(1) are proposed to be deleted.

Paragraph (b)(2) of § 1915.85 would require winding and spiral stairways to be equipped with a handrail offset to prevent employees from walking on those portions of the stairways where the treads are less than six inches wide. This is the same requirement as § 1910.23(d)(2), except the proposal expands the rule to include spiral stairways. Spiral stairways would be included because the problem of too narrow a tread is common to both types of stairways.

Paragraph (b)(3) of § 1915.85 would require the height of new stairrails to be not less than 36 inches (30 inches for existing systems) as measured from the upper surface of the stairrail system down to a point on the upper surface of the tread in line with the face of the riser at the forward edge of the tread. Existing § 1910.23(e)(2) presently specifies a minimum height of 30 inches and a maximum height of 34 inches, measured the same way as required by the proposed rule. The limits specified in the existing rule were developed so they would be compatible with existing handrail limits which were also 30 and 34 inches, and so allowed one rail to serve two functions. However, a study by the University of Michigan (Ref. 1:56) shows that the minimum height for railings providing fall protection should be 42 inches. That study suggests that even 42 inches may be too low because "the height of the stair railing several steps below the point where the fall originates is considerably lower than the stair railing height at the point where the fall originates, thus, it appears that a fall during descent may be more likely to project the subject in the direction of this 'lower' railing, and possibly over the railing" (Ref. 1:57). Nevertheless, in order to recognize the limits already established by many existing building codes, and to allow shipyards to continue the common practice of combining stairrails and handrails into one railing system, OSHA is proposing that the minimum height of stairrails be 36 inches. In addition, because it would not be feasible to require retrofitting of all existing railings in shipyards, OSHA is proposing that existing systems be "grandfathered."

Paragraph (b)(4) of § 1915.85 would require midrails, screens, mesh, intermediate vertical members (such as balusters), or equivalent structural members to be placed between the

stairways steps and the top of the stairrail system. This is essentially the same as existing rule § 1910.23(e)(2) which requires stairrails to be similar in construction to guardrails, except specified alternatives to midrails would be allowed. Paragraph (b)(4)(i) would require midrails, when used, to be located midway in height on a stairrail system. This is the same requirement as contained in § 1910.23(e)(1). Paragraph (b)(4)(ii) would require screens or mesh, when used, to fill the entire opening between top rail and stairway steps, and paragraph (b)(4)(iii) would require baluster type members to be no more than 19 inches apart. Paragraph (b)(4)(iv) would allow other arrangements of structural members provided all openings in the system are not more than 19 inches wide. These rules would technically be new provisions as the existing rule only addresses the use of midrails. However, these new rules are not expected to increase costs of compliance because they are alternative choices to the use of midrails, and would allow greater flexibility for the employer providing fall protection.

Paragraph (b)(5) of § 1915.85 would require handrails and the top rails of stairrail systems to be capable of withstanding, without failure, a force of at least 200 pounds applied within two inches of the top surface, in any downward or outward direction, and at any point along the top edge. This is essentially the same requirement as contained in § 1910.23(e)(3).

Paragraphs (b)(6) and (b)(7) of § 1915.85 specify the maximum and minimum height for handrails, and stairrails which are to serve as handrails. Although existing rules §§ 1910.23(e)(2) and 1910.23(e)(5)(ii) specify 30 and 34 inches as appropriate limits, a study by the University of Michigan (Ref. 1:43) has determined that 33 inches is the optimum height, and that a variance from this height of plus or minus three inches is appropriate. This new limit, coupled with the requirements of paragraph (b)(3), would allow any 36-inch high stairrail system to double as a handrail. However, the upper limit for handrails is proposed to be 37 inches to allow some flexibility in providing a system that can meet the height criterion for both stairrail systems and handrail systems.

Paragraph (b)(8) of § 1915.85 would require stairrail systems and handrails to be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent the snagging of clothes (which in turn could cause an employee to trip). This is the same

requirement as § 1910.23(e)(3)(v)(a) which covers stairrails, except the proposal would also include handrails because they can pose the same hazards. This provision would not preclude rails from being surfaced to provide grip enhancement.

Paragraph (b)(9) of § 1915.85 would require handrails to provide an adequate handhold for anyone using them. This is the same requirement as in § 1910.23(e)(5)(i).

Paragraph (b)(10) of § 1915.85 would require that the ends of stairrail systems and handrails be constructed such that they do not constitute projection hazards. This is the same requirement as in § 1910.23(e)(1) and § 1910.23(e)(5)(i).

Paragraph (b)(11) of § 1915.85 would require handrails to be spaced a minimum of one and one-half inches away from walls, stairrail systems, and other objects. This is a change from § 1910.23(e)(6), which requires a minimum clearance of three inches. The proposed change would bring OSHA standards into conformance with the current requirements of many local building codes, as well as to ANSI standard A12.1-1973, "Safety Requirements for Floor and Wall Openings, Railings, and Toeboards," paragraph 7.6 (Ref. 2).

Section 1915.86 Ladders

This section specifies the requirements for all ladders used by shipyard employees, except those which are a permanent part of a vessel or vessel section.

Section 1915.86(a)—General.

Paragraph (a) of § 1915.85 would set forth the general requirements for the construction of ladders.

Paragraph (a)(1) of § 1915.86 would specify minimum strength requirement for all ladders. Specifically, paragraph (a)(1)(i) would require each portable ladder and each job-built ladder to be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to that ladder when the ladder is placed at an angle of 75½ degrees from horizontal. This minimum strength requirements for portable ladders is essentially the same requirement as contained in existing paragraphs (a)(4) and (a)(6) of § 1915.72, which reference the A14.2-1972 ANSI standard (paragraph 6.1.3) for portable metal ladders (Ref. 4) and the A14.1-1975 ANSI standard (paragraph 6.1.3) for portable wood ladders (Ref. 3), respectively. However, breakage, separation of component parts, or load refusal would be used as the failure criteria instead of "deformation," as some rung deformation will normally

result when such loads are applied, and a deformed rung does not necessarily indicate a ladder which is unsafe for use. Job-built ladders do not have minimum strength criteria either in the existing OSHA rules or in the ANSI standard for job-built ladders, A14.4-1979 (Ref. 5). However, their potential use is the same as that of manufactured portable ladders, and, therefore, the proposed standards would impose the same strength requirements.

Paragraph (a)(1)(ii) of § 1915.86 would require fixed ladders to be capable of supporting, without failure, at least two loads of 250 pounds each, concentrated between any two consecutive points of attachment, plus other anticipated loads such as those caused by wind and ice buildup. The paragraph would also require that each step and rung be capable of supporting a minimum concentrated load of 250 pounds, applied in the middle of its span. This requirement is based on § 1910.27(a)(1), however, the specific requirements have been changed to reflect the more recent requirements of ANSI A14.3-1984 (Ref. 6), paragraph 3.2.1.1. The ANSI criteria are based on loads of 250 pounds, and are consistent with OSHA's current use of 250 pounds as the average design weight of an employee and tools.

OSHA believes it may not be practicable for an employer to test every ladder before purchase to see if it meets the performance criteria of paragraph (a)(1) of § 1915.86. However, many ladders are manufactured to meet ANSI ladder standards, and paragraph (a)(1) would recognize such ladders as meeting the requirements of paragraph (a)(1). Appendix B references the current ANSI standards that apply to portable wood ladders, portable metal ladders, portable reinforced ladders, fixed ladders, and job-made ladders.

Ladders built in conformance with Appendix B would be deemed by OSHA to meet the strength requirements of paragraph (a)(1). This includes extra heavy duty type 1A ladders built in accordance with the 1982 ANSI standards for portable metal ladders (Ref. 4). The standard would also apply to portable reinforced plastic ladders (Ref. 9). ANSI requires these types of ladders to have a safety factor of only 3.3. However, OSHA believes that the extensive testing procedures also required by ANSI are sufficient to insure adequate ladder strength.

The use of Appendix B would allow design flexibility for employers who desire to engineer their own ladders, and would provide an acceptable design for employers who do not desire to or cannot engineer the ladders they use. The important consideration is that the

ladder be capable of safely supporting the loads imposed.

Paragraph (a)(2) of § 1915.86 would require ladder rungs, cleats, and steps to be parallel, level, and uniformly spaced when the ladder is in position for use. This requirement is based on § 1910.25(c)(2)(1)(b) which applies to portable wood ladders, and § 1910.27(b)(1)(ii) which applies to fixed ladders. However, OSHA believes that proper footing is necessary on all ladders and this provision would apply to all types of ladders.

Paragraph (a)(3) of § 1915.86 would require that rungs, cleats, and steps be spaced not less than six inches apart, nor more than 12 inches apart, as measured along the siderails of fixed and portable ladders, and that the limits be six and 16½ inches for individual step or rung ladders. The 12-inch limit is the same as §§ 1910.25(c)(2)(i)(b) and 1910.26(a)(1)(iii). The other proposed limits are based on the general limits used in ANSI's current standards for the most commonly used types of ladders (Refs. 5-9). Public comment is requested on these limits in the Specific Issues section of this preamble.

Paragraph (a)(4) of § 1915.86 would specify minimum rung, cleat, and step length for various ladders. These limits are based on current § 1910.25(c)(2)(i)(c), § 1910.26(a)(2)(i), § 1910.27(b)(1)(iii), and § 1915.72(b)(5). The minimum limit of 12 inches for plastic reinforced ladders is based on the requirements set forth for such ladders in ANSI A14.5-1972 (Ref. 9).

Paragraph (a)(5) of § 1915.86 would require individual rung ladders to be shaped such that employees' feet cannot slide off rung ends. This is the same requirement as § 1910.27(b)(1)(v).

Paragraph (a)(6) of § 1915.86 would require rungs and steps of metal ladders to be corrugated, knurled, dimpled, coated with skid resistant material, or be otherwise treated to minimize slipping. This is the same requirement as the portable metal ladder requirement in § 1910.26(a)(1)(v), except it would apply to all ladders as slipping hazards can be present on all types of ladders.

Paragraph (a)(7) of § 1915.86 would require Jacob's ladders to be of the double rung or flat tread type. This is the same requirement as in § 1915.74(d)(1).

Paragraph (a)(8) of § 1915.86 would prohibit the tying together of ladder sections to make a longer ladder, unless the sections are designed for such use. This provision is essentially the same as § 1910.25(d)(2)(ix) and § 1910.26(c)(3)(vi).

Paragraph (a)(9) of § 1915.86 would require that a spliced siderail be equivalent in strength to a siderail of the

same length made of one piece of the same material. This is the same requirement as the construction industry provision, § 1926.450(a)(7). OSHA believes this rule should apply to all ladders, not just job-made ladders used in construction, as proper splices are important on all ladders in order to maintain proper ladder strength along its full length.

Paragraph (a)(10) of § 1915.86 would require stepladders to be provided with a metal spreader or other locking device to keep the ladder in an open position when being used. This is the same provision as §§ 1910.25(c)(i)(f), and 1910.26(a)(3)(viii).

Paragraph (a)(11) of § 1915.86 would require ladder surfaces to be free of puncture and laceration hazards. This provision is essentially the same requirement as in § 1910.25(b)(1), § 1910.26(a)(1), § 1910.27(b)(1)(iv), and § 1915.72(b)(2).

Paragraph (a)(12) of § 1915.86 would prohibit wood ladders from being coated with any opaque covering except as necessary for identification or warning labels. This provision is intended to prohibit covering or painting over any splits or cracks in any wood ladder component which would cause the defect to be unnoticeable to a ladder user. This requirement is based on the § 1915.72(a)(6) reference to ANSI A14.1-1975 (Ref. 3), which addresses this in paragraph 7.1.9. However, the specific wording of the proposal is based on the revised ANSI A14.1-1982 (Ref. 7), paragraph 8.4.6.3.

Paragraph (a)(13) of § 1915.86 would require that when two or more separate ladders are used to reach an elevated work area, the ladders be offset and a platform be used between ladders. This would be a new provision, and is based on the need for proper footing at all times, especially when moving from one ladder to another. The platform also serves to protect employees who are descending a ladder which does not extend to the next lower level from inadvertently stepping off the bottom of a ladder and falling.

Paragraph (a)(14) of § 1915.86 would require a minimum perpendicular clearance of seven inches between fixed ladder rungs, cleats, and steps, and any obstruction behind the fixed ladder. This is essentially the same requirement as contained in § 1910.27(c)(4). However, the proposal does not provide for "unavoidable" obstructions as in the existing rule. This change is made in line with the language of the more recent ANSI standard A14.3-1984 (Ref. 6), paragraph 5.4.2.1, and reflects the need for proper toe clearance at all times.

Paragraph (a)(15) of § 1915.86 would require a minimum clearance of 30 inches between fixed ladders and any obstruction on the climbing side of the ladder. This is the same provision as in § 1910.27(c)(1). In keeping with ANSI A14.3-1984 (Ref. 6), paragraph 5.4.1.1, the other clearance limits presently in § 1910.27(c)(1) would be deleted as unnecessary, because when unavoidable obstructions are present, paragraph (a)(16) of § 1915.86 would allow the minimum clearance to be as low as 24 inches, provided a device is installed to guide employees around the obstruction. This provision is based on ANSI A14.3-1984, paragraph 5.4.1.3.

Paragraph (a)(17) of § 1915.86 would specify minimum and maximum step-across distances at landings for fixed ladders of seven inches and 12 inches, respectively. This is the same requirement as in § 1910.27(c)(6), except the existing two and one-half inch minimum limit is changed to seven inches to be consistent with the minimum clearance limit of proposed rule § 1915.86(a)(14).

Paragraph (a)(18) of § 1915.86 would require a minimum of 15 inches side clearance (from the ladder centerline) for all fixed ladders that do not have cages or wells. This is the same provision as in § 1910.27(c)(2).

Paragraphs (a)(19) and (a)(20) of § 1915.86 would require fixed ladders to be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet, but the top of the ladder is more than 24 feet above lower levels; and for all fixed ladders where the length of climb equals or exceeds 24 feet. This requirement is based on § 1910.27(d)(1)(ii) and (d)(5), which require protection on ladders longer than 20 feet. However, the proposed requirement reflects the updated and clarified language of ANSI A14.3-1984 (Ex. 6), paragraph 4.1., and the proposal would allow the use of the self-retracting lifelines as alternative fall protection to wells, cages, and ladder safety devices.

Paragraphs (a)(21) and (a)(22) of § 1915.86 would set forth the requirements for fixed ladder cage and well construction and are essentially the same as § 1910.27(d). However, the proposal reflects the updated and clarified language of ANSI A14.3-1984 (Ref. 6), paragraphs 6.1 and 6.2. Significant changes are as follows: Maximum cage size is increased from 28 inches to 30 inches to allow easier employee movement; wells would not be required to encircle the ladder completely and be free of projections; and the bottom access opening for wells

would be required to be not less than seven feet nor more than eight feet high in order to provide proper access to the ladder (the existing standard does not clearly address this point).

Paragraph (a)(23) and (a)(24) of § 1915.86 would set forth the requirements for ladder safety devices and are based on § 1910.27(d)(5). However, the proposal would provide necessary design and performance criteria which are not clearly set forth in the existing rule.

Paragraphs (a)(23)(i) of § 1915.86 would require ladder safety devices and their support systems (such as the ladder to which they are attached) to be capable of withstanding, without failure, a drop test consisting of an 18-inch (.41 m) drop of a 500 pound (226 kg) weight. This provision is based on the ANSI A14.3-1984 (Ex. 6), paragraph 7.1.3. Paragraph .86(a)(23)(ii) would require the devices to be of a design which permits employees using the system to ascend or descend without continually having to manipulate any part of the system. The requirement is essentially the same as paragraph 7.3.1 of ANSI A14.3-1984. Paragraph § 1915.86(a)(23)(iii) would require ladder safety devices to limit the descending velocity of an employee to seven feet per second (2.1 m/sec) or less within two feet (.61 m) after a fall occurs. A National Bureau of Standards' report (Ex. 10) suggests a maximum descent rate of 15 feet per second for uninjured employees, and 10 feet per second [3.1 m/sec] for injured employees using descent devices. OSHA is proposing a more conservative rate of seven feet per second (2.1 m/sec) for this type of fall protection system, as a descending employee is exposed to additional risk of injury from contact with the ladder during descent. OSHA believes that in addition to providing protection from the force of the fall, a seven foot per second rate would enable an employee to regain control on the ladder, or to allow for emergency egress at a reasonable and safe speed. It represents the speed attained after free falling approximately one foot (30.5 cm).

Paragraph (a)(23)(iv) of § 1915.86 would require that the maximum length of the connection between the carrier or lifeline and the point of attachment to the body belt not exceed nine inches (23 cm). This requirement is based on a recommendation contained in Drs. Chaffin and Stobbe's report, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR Part 1910, Subpart D" (Ref. 11), which indicates that this

distance is needed to ascend and descend a ladder in a position that is not awkward.

Paragraph (a)(24) of § 1915.86 would set forth the mounting requirements for ladder safety devices. Paragraph (a)(24)(i) of § 1915.86 would require mountings for rigid carriers to be attached at each end of the carrier, with intermediate mountings spaced along the entire length of the carrier. This is based on ANSI A14.3-1984, paragraph 7.3.4. Paragraph (a)(24)(ii) of § 1915.86 would require mountings for flexible carriers to be attached at each end of the carrier, and that when the system is exposed to wind, cable guides be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier to prevent wind damage to the system. These are the same requirements as in ANSI A14.3-1984, paragraph 7.3.5. Paragraph (a)(24)(iii) of § 1915.86 would require that the design and installation of mountings and cable guides not reduce the design strength of the ladder. This is based on ANSI A14.3-1984, paragraph 7.1.4.

Paragraph (a)(25) of § 1915.86 would require the siderails of fixed ladders to extend 42 inches above the top of the access level or landing platform served by the ladder. This is essentially the same provision as in § 1910.27(d)(3). However, the proposal also provides that for a parapet ladder, if the parapet is cut to permit passage through the parapet, the access level shall be the level of the roof. If the parapet is continuous (i.e., uncut) then the access level is the top of the parapet. This part of the provision is based on ANSI A14.3-1984, paragraph 5.3.2.1.

Paragraph (a)(26) of § 1915.86 would require ladder extensions on through-type fixed ladders, which are not equipped with ladder safety devices, to have the steps or rungs omitted from the extension. In addition, the extension shall be flared not less than 24 inches (18 inches for existing ladders) and not more than 30 inches. The existing 18-inch minimum limit of § 1910.27(d)(3) would be "grandfathered." The change of limit is based on the updated requirements of ANSI A14.3-1984, paragraph 5.3.2.2., which require more distance between rails to facilitate employee passage. The proposal would allow a maximum spacing of 36 inches for ladders equipped with ladder safety devices. This rule is also based on ANSI A14.3-1984, paragraph 5.3.2.2.

Paragraph (a)(27) of § 1915.86 would require the siderails and the steps or rungs of side-step ladders to be continuous in the extension. It is the same requirement as in § 1910.27(d)(3),

although the wording is changed to reflect ANSI A14.3-1984, paragraph 5.3.2.3.

Paragraph (a)(28) of § 1915.86 would require specified individual rung ladders to extend 42 inches above the landing platform, either by providing additional rungs to serve as grab bars, or by providing vertical grab bars. This is a clarification of how § 1910.27(d)(3) applies to such ladders, and is based on ANSI A14.3-1984, paragraph 5.3.3.1.

Section 1915.86(b)—Use. Paragraph (b) of § 1915.86 would set forth the requirements for safe ladder use by shipyard employees.

Paragraph (b)(1) of § 1915.86 would require ladder siderails to extend at least three feet above the upper level or surface to which the ladder is used to gain access. This is essentially the same requirement as § 1910.25(d)(2)(xy) and § 1915.72(a)(3). The proposal would provide that when such extensions are not possible because of the ladder's length, then the ladder shall be secured at its top and employees be provided with a grasping device such as a grabrail. This is essentially the same provision as in § 1915.72(a)(3), except that the proposal would require the securing of the ladder and would not limit alternative solutions to grabrails.

Paragraph (b)(2) of § 1915.86 would require ladders to be free of slipping hazards. This requirement is based on the § 1910.25(a)(1)(xi) requirement that ladder rungs be "kept free of grease and oil"; and the § 1910.26(c)(2)(vi) (d) requirement to keep oil, grease, and slippery materials off ladders.

Paragraph (b)(3) of § 1915.86 would require that ladders not be loaded beyond their maximum intended load-carrying capacity, nor beyond their rated capacity. This rule would clarify the intent of the existing and proposed rules which set forth design criteria for ladders. This provision would prevent the overstressing of ladders which can lead to their failure.

Paragraph (b)(4) of § 1915.86 would require that ladders be used only for the purpose for which they were designed. This provision is based on the § 1910.25(d)(2)(xi) requirement that ladders not be used as guys, braces, skids, or for other than their intended purpose. This provision is also based on the § 1910.26(c)(3)(vii) requirement that ladders not be used as braces, skids, guys, gin poles, gangways, or for other purposes than that for which they were intended, unless specifically recommended for such use by the ladder manufacturer.

Paragraph (b)(5) of § 1915.86 would require non-self-supporting ladders to be used such that the angle of inclination is

approximately one to four, horizontal distance to working ladder length distance. This is the same provision as §§ 1910.25(d)(2)(i) and 1910.26(c)(3)(1). The proposed rule would also include the language of ANSI A14.4-1979 (Ref. 5), "Safety Requirements for Job-Made Ladders," paragraph 4.4.1, which increases the required minimum angle to a ratio of one to eight for job-made ladders made with spliced siderails. This steeper angle minimizes the stresses placed on the spliced siderails when the ladder is in use.

Paragraph (b)(5) of § 1915.86 would require fixed ladders to be used at a pitch no greater than 90 degrees from the horizontal as measured to the backside of the ladder. This rule is based on § 1910.27(e)(4).

Paragraph (b)(6) of § 1915.86 would require ladders to be used only on stable and level surfaces unless secured to prevent accidental displacement. This requirement is based on the §§ 1910.25(d)(2)(iii) and 1910.26(c)(3)(iii) requirements that portable ladders have a "secure footing." The term "stable" is used in lieu of the term "secure" as the latter term is used in paragraph (b)(8) of § 1915.86 to mean physically attaching the ladder to some anchorage. Examples of unstable surfaces are boxes and barrels, the same as in § 1910.25(d)(2)(v). The additional requirement that the surface must be level or the ladders be secured is based on ANSI A14.1-1982 (Ref. 7), paragraph 8.3.4, and is included because surfaces which are not level do not provide suitable support for unsecured ladders.

Paragraph (b)(7) of § 1915.86 would prohibit the use of ladders on slippery surfaces unless they are secured or provided with slip-resistant feet. This is essentially the same provision as in §§ 1910.25(d)(2)(i) and 1910.25(d)(2)(ix).

Paragraph (b)(8) of § 1915.86 would require ladders placed in passageways, doorways, or any location where they can be displaced by other activities or traffic, to be secured in place, or a barricade system used to keep activities and traffic away from the ladder. This is essentially the same provision as § 1915.72(a)(3), which requires portable ladders to be lashed, blocked, or otherwise secured to prevent their being displaced. However, the proposal would allow the alternative of barricading the area around the ladder. The proposed rule is also based on § 1910.25(d)(2)(iv) which prohibits ladders from being placed in front of a door unless the door is blocked, locked, or guarded.

Paragraph (b)(10) of § 1915.86 would require the tops of non-self-supporting ladders to be placed such that the two

siderails are equally supported, or provided with a single support attachment. This requirement would insure proper ladder stability and is essentially the same provision as §§ 1910.25(d)(2)(iv) and 1910.26(e)(3)(iv).

Paragraph (b)(11) of § 1915.86 would provide that ladders not be moved, shifted, or extended while occupied, and is based on § 1910.25(d)(2)(xvi), which prohibits adjustment of ladders while an employee is on the ladder. The proposal would clarify the term "adjustment," and would apply to all types of ladders.

Paragraph (b)(12) of § 1915.86 would require ladders to have non-conductive siderails when used where the ladder could contact energized equipment, or when used by employees performing electric arc welding operations. This is essentially the same rule as § 1915.72(a)(5), and clarifies the requirements of § 1910.26(c)(3)(viii).

Paragraph (b)(13) of § 1915.86 would prohibit using the top of a stepladder as a step. This is essentially the same provision as § 1910.25(d)(2)(xii), except it would apply to all stepladders and not just "ordinary" stepladders, as the hazard is the same.

Paragraph (b)(14) of § 1915.86 would prohibit using the cross-bracing on stepladders as a step. This is essentially the same provision as § 1910.25(d)(2)(xx).

Paragraph (b)(15) of § 1915.86 would require ladders to be inspected for visible defects periodically, preferably before each use, and after any occurrence which could affect their use. This is essentially the same requirement as is contained in § 1910.25(d)(1)(x), § 1910.26(c)(2)(iv) and (vi), and § 1915.72(a)(1). Public comment is requested on the frequency of inspection in the Specific Issues section of this preamble.

Paragraph (b)(16) of § 1915.86 would provide that ladders with structural defects be immediately tagged and withdrawn from service until repaired. This is essentially the same rule as contained in §§ 1910.25(d)(1)(x), 1910.26(c)(2)(viii), and 1915.72(a)(1).

Paragraph (b)(17) of § 1915.86 would require ladder repairs to restore the ladder to a condition meeting the design criteria of the ladder. This clarifies the term "repaired" as used in proposed paragraph § 1915.86(b)(16). It means that if, for example, a Type 1A extra-heavy-duty-rated ladder has a broken rung, the replacement rung also must be capable of supporting at least a 300 pound load.

Paragraph (b)(18) of § 1915.86 would prohibit the use of single rail ladders except for emergency or rescue operations. This is essentially the same rule as § 1910.25(d)(2)(x), except

emergency and rescue use of such ladders would be specifically allowed.

Paragraph (b)(19) of § 1915.86 would require Jacob's ladders to be either hung without slack from their lashings, or be pulled up entirely. This is the same rule as § 1915.74(d)(2).

Paragraph (b)(20) of § 1915.86 would restrict the use of blasting hoods, welding helmets, and burning goggles by employees on ladders, and is the same rule as contained in § 1915.77(c).

Paragraph (b)(21) of § 1915.86 would require employees who are ascending or descending a ladder to face the ladder. This is the same rule as § 1910.26(c)(3)(v) and clarifies the intent of § 1910.25(d)(2)(vii) which uses the non-mandatory term "should" in its requirement.

Section 1915.87 Gangways, walkways, ramps, catwalks, and dockboards (bridge plates).

This section would set forth the general requirements for the construction of gangways, walkways, ramps, catwalks, and dockboards. However, the requirements for fall protection (i.e., guardrails and personal fall protection equipment) would be contained in proposed Subpart M—Fall Protection.

Section 1915.87(a)—Gangways and walkways. Paragraph (a) of § 1915.87 would set forth the requirements for the construction of gangways and walkways. This is essentially the same provision as existing § 1915.74(a)(1), but it would clarify that both gangways and walkways are covered. The provision would recognize that gangways on vessels inspected and certified by the U.S. Coast Guard are deemed to be satisfactory for use by employees, except in cases where the vessel's regular gangway is not used. This is the same provision as existing § 1915.74(a)(3).

Section 1915.87(b)—Ramps. Paragraph (b) of § 1915.87 would set forth the requirements for the construction of ramps. Paragraph (b)(1) of § 1915.87 would require ramps for employee access to meet the same criteria as set forth for gangways and walkways. Paragraph (b)(2) of § 1915.87 would require vehicle access ramps to be capable of supporting the maximum intended load, without failure and is based on § 1915.74(c)(1).

However, the proposed requirement would replace the existing requirement that such ramps "be of adequate strength." The change, coupled with the proposed definitions for "maximum intended load" and "failure," clarifies the requirement by setting forth the performance criteria to be met.

Section 1915.87(c)—Catwalks.

Paragraph (c) of § 1915.87 would set forth the requirements for the construction of catwalks used on marine railways. It is based on both existing § 1915.75(g) and the proposed provisions for gangways and walkways discussed above.

Section 1915.87(d)—Dockboards (Bridge plates).

Paragraph (d) of § 1915.87 would set forth the requirements for the construction of use of dockboards. It is the same as § 1910.30(a) which covers the same topic. However, public comment is requested in the Specific Issues section of this preamble as to whether or not the existing reference to Commercial Standard CS 202-56 (1961) should be updated.

Sections 1915.88 through 1915.90 are reserved for future use.

Specific Issues

In addition to any other comments made on this subpart, the public is requested to comment on the following specific issues:

1. The proposed definitions for "low hazard contents," "high hazard contents," and "ordinary hazard contents" are the same as the existing § 1910.35 definitions for those terms. The § 1910.35 definitions are essentially the same as the definitions used by the National Fire Protection Association (NFPA). However, when informed that these provisions might be revised, the following comments were made in 1984 by the International Brotherhood of Painters and Allied Trades in respect to these definitions:

"High hazard contents," "low hazard contents," and "ordinary hazard contents" are defined in such a fashion as to be internally inconsistent, vague, non-exclusive, insufficient, and inappropriate in the context of the ordinary meaning of the term "hazardous" as it is used in other OSHA standards and in standard industrial hygiene practice. "High hazard contents," for example, should include materials that are "highly reactive, oxidizing or combustible" as well as those "capable of generating toxic fumes, dusts, mists or vapors," and the definition should certainly include the "fear" of "any uncontrolled release of such materials" not just those which generate fumes. Similarly, "low hazard . . . requiring the use of emergency exits . . ." should not be limited only to "combustibility." Finally, "ordinary hazards," leaves unclassified materials "which burn with moderate rapidity," but do not give off "considerable smoke" (they cannot be "low hazard" because they burn with "moderate rapidity" and they cannot be "high hazard" as neither "poisonous fumes nor explosions are to be feared.")

In light of the above comments, public comment is requested on whether the proposed definitions should be modified and, if so, how should they be changed.

2. Existing provisions contained in §§ 1910.35, 1910.36, and 1910.37 and proposed provisions of §§ 1915.80 and 1910.81 set forth minimum requirements for providing employees a safe means of escape from buildings and structures on shore during fires and other emergencies. Public comment is requested on what similar provisions, if any, should apply to vessels, vessel sections, vehicles, and other mobile equipment. Comments should include appropriate injury and cost data.

3. Paragraph § 1910.38, *Employee emergency plans and fire prevention plans*, "applies to all emergency action plans required by a particular standard" (§ 1910.38(a)(1)). Presently, the only OSHA standard that requires such plans is Subpart L of Part 1910, Fire Protection. However, Subpart L specifically omits maritime activities from its application. Such omission was made because at the time Subpart L and § 1910.38 were developed, shipyard application was not evaluated. Public comment is now requested on areas of shipyard employment in which emergency action plans as described in § 1910.38(a) are appropriate. Comments should address which parts of § 1910.38(a) should or should not be applied and under what conditions, and should include appropriate injury and cost data. Comments should also address whether or not the provisions should apply to vessels and vessel sections, or only to shoreside facilities.

4. Proposed paragraph (b)(15) of § 1915.86 would require ladders to be inspected for visible defects periodically, preferably before each use, and after any occurrence which could affect their use. This requirement for inspection is based on §§ 1910.25(d)(1)(x), 1910.26(c)(2)(iv), (vi), and 1915.72(a)(1). Generally, the existing rules do not specify a definite frequency rate for inspections. The proposed frequency, however, is similar to that set out in paragraphs 8.4.1 of ANSI 14.1-1982 (Ex. 7), and A14.2-1982 (Ex. 8), and to the requirement in § 1910.26(c)(2)(vi). Public comment is requested on the specified frequency of inspection.

5. Proposed paragraph (a)(1)(i) of § 1915.86 would require ladders to have a four to one strength capacity (ladders meeting ANSI specifications (Refs. 3-9) are deemed to meet this requirement). However, once a ladder has been designed and is in use, it is difficult to assess its strength capacity as loading the ladder to four times its rated

capacity could permanently damage the ladder and render it useless. As an alternative, setting a maximum allowable deflection for a ladder while in use might be an appropriate method of evaluating a ladder's capacity. Public comment is requested on whether or not OSHA should specify a maximum allowable deflection for ladders, and if so, how much should be allowed, and how should it be measured (for example, horizontally with end points supported and the working load applied in midspan)?

6. Proposed paragraph (a)(3) of § 1915.86 specifies minimum vertical spacing between ladder rungs, steps, and cleats. These limits are based on the general limits set forth in the ANSI standards for ladders (Refs. 5-9). However, the proposed limits reflect OSHA's attempt to consolidate the wide range of ANSI's limits, and consequently, do not mirror the existing ANSI provisions exactly. Therefore, public comment is requested on the following points:

(a) Are the proposed limits appropriate, or should the more specific ANSI limits be adopted?

(b) If the proposed limits are appropriate, should they be consolidated further so that there is only one set of rules for vertical spacing, such as six to 12 inches, and one minimum width limit, such as 11½ inches?

As it is OSHA's intention to simplify the existing rules and use less specification type language, proponents for using the more specific ANSI limits should state why the various limits are required for each type of ladder. Comments should include appropriate injury and cost data.

7. Public comment is requested on whether or not the following rule should be added to Subpart E: "Workers shall not be permitted to climb a ladder with their hands full. A handline shall be used for raising and lowering tools and materials." Comments should include appropriate injury and cost data.

8. The proposed provisions on the minimum height of stairrail systems (§ 1915.85(c)(3) and § 1915.85(c)(7)), and the minimum amount of siderail fare on through-type fixed ladders (§ 1915.86(a)(26)) are intended to bring the shipyard employment standards into conformance with similar provisions being developed for the construction industry safety standards and the general industry safety standards. Public comment is requested on whether or not existing guardrail systems and fixed ladder siderails in shipyard employment should be "grandfathered," and whether or not other facilities or equipment should also be

"grandfathered," and why such "grandfathering" is appropriate. Comments should include a discussion of related cost, injury, and feasibility data.

9. Proposed paragraph (d)(3) of § 1915.87 is based on existing § 1910.30(a)(3) and would require powered dockboards to be designed and constructed in accordance with Commercial Standard CS 202-56 (1961) "Industrial Lifts and Hinged Loading Ramps" published by the U.S. Department of Commerce. Public comment is requested on whether or not the referenced requirements should be modified. If so, comments are requested on what changes should be made and why they should be made. Relevant cost, injury, and feasibility data are also requested.

10. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, see Issue Number 6 above addressing ladder rung spacing, and see existing § 1910.24(e) and proposed § 1915.85(a)(2) which address stairway slope. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "provide adequate rung spacing," or "install stairways at such angles that tripping is minimized," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above, and those for stairrail, handrail heights, and similar requirements) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employees and employers about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase

costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

III. References

1. Chaffin et al., *As Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surfaces*, University of Michigan, Department of Industrial and Operations Engineering, College of Engineering, Ann Arbor, Michigan, 1978.
2. American National Standards Institute, *A12.1-1973—Safety Requirements for Floor and Wall Openings, Railings, and Toeboards*, New York, New York.
3. American National Standards Institute, *A14.1-1975—Safety Requirements for Portable Wood Ladders*, New York, New York.
4. American National Standards Institute, *A14.2-1972—Safety Requirements for Portable Metal Ladders*, New York, New York.
5. American National Standards Institute, *A14.4-1979—Safety Requirements for Job-Made Ladders*, New York, New York.
6. American National Standards Institute, *A14.3-1984—American National Standard for Ladders—Fixed—Safety Requirements*, New York, New York.
7. American National Standards Institute, *A14.1-1982—American National Standard for Ladders—Portable Wood—Safety Requirements*, New York, New York.
8. American National Standards Institute, *A14.2-1982—American National Standard for Ladders—Portable Metal—Safety Requirements*, New York, New York.
9. American National Standards Institute, *A14.5-1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements*, New York, New York.
10. National Bureau of Standards (NBS), *NBSIR 76-1146, A Study of Personal Fall-Safety Equipment*, Washington, D.C.: NBS, June 1977.
11. Chaffin, Don B. and Terrence J. Stobb, *Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR 1910, Subpart D*, The University of Michigan, Ann Arbor, Michigan, September 1973.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193 February 17, 1981) OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the *Federal Register*.

In light of the data currently available to OSHA, the economic impact estimates presented in this preamble are rough estimates which are likely to be refined as OSHA receives additional information.

OSHA solicits further comments on the estimates presented in this preamble and those comments will be addressed and incorporated into the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the November 1985, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA also used an October 1984, report by Main Hurdman/KMG entitled "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed consolidation of the provisions found in the existing Part 1915, Subpart E, and the existing Part 1910, Subpart D, which govern ladders, stairways, and access and egress in shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 687 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this lost business has been partially offset by the increase in the U.S. Navy's demands for ships, the

decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

OSHA has estimated that every shipyard employee will be affected by the provisions in this proposed consolidation. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 in 1986. Consequently, given the potential for large changes in the demand for this industry's product, OSHA has estimated that the population-at-risk would be between 136,300 and 180,000 employees.

Risk of Fatality or Injury

OSHA has estimated that the number of annual injuries in shipyards due to accidents associated with access and egress (e.g., falls from ladders, falls down stairways, etc.) was between 1,165 and 1,875 between 1981 and 1986. Of these injuries, 595 to 1,060 were lost workday injuries. As the average number of lost workdays per lost shipyard workday injury was between 20.4 and 26, OSHA has estimated that the number of lost workdays in shipyards due to these accidents would be between 11,480 days and 21,815 days.

In addition, OSHA has determined that there would be about one annual fatality in shipyards associated with access and egress accidents.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving access and egress in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of access and egress requirements into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Consequently, it could make compliance less costly while maintaining employee safety. Thus, the consolidated proposal may lead to an increase in compliance which, in turn, may lead to an increase in employee

safety while using means of access and egress.

The second source is the benefits and decreased costs that should accrue to those employers who would be allowed to use certain safety systems and equipment and follow certain work practices that are not allowed by the existing specification requirements but would provide the same level of employee safety as that generated by the specifications. The use of these equipment and practices would allow employers to maintain the necessary level of safety for their employees at less cost than is possible for compliance under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

With respect to this proposed consolidation, CONSAD received no information indicating that shipyards were not in substantial compliance with the existing standards governing ladders, stairways, access, egress, etc. Thus, OSHA has determined that there would be no costs of compliance with the proposed consolidation because there have been no provisions which have been changed substantively. Nevertheless, as previously mentioned, this is a preliminary RIA and OSHA invites public comment concerning this determination. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposed standard would not have a significant impact upon a substantial

number of small entities. OSHA invites public comment concerning this certification.

The assessment is available for inspection and copying at the OSHA Docket Office, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, and proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not affect air, water, or soil quality, plant or animal life, the use of the land, or other aspects of the environment. As such, these revisions are therefore categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S-044, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657) and 29 CFR

1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken or about which the hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently five States (California, Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime

activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut¹, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York¹, North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Guardrail systems, Marine safety, Occupational safety and health, Personal fall protection equipment, Personal flotation devices, Safety, Ship repair, Shipyard employment, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); sections 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. Subpart E of Part 1915 would be revised to read as follows:

Subpart E—Access and Egress

Sec.

1915.71 Scope, application, and definitions applicable to this subpart.

1915.72 General requirements for means of access.

1915.73 Access to vessels.

1915.74 Access to drydocks and drydock wingwalls.

¹ Plan covers only State and local government employees.

Sec.

1915.75 Access to cargo spaces and confined spaces aboard vessels and vessel sections.

1915.76—1915.79 [Reserved].

1915.80 General requirements for means of egress from buildings and structures.

1915.81 Specific requirements for means of egress from buildings and structures.

1915.82 Aisles and passageways in buildings and structures.

1915.83—1915.84 [Reserved].

1915.85 Stairways.

1915.86 Ladders.

1915.87 Gangways, walkways, ramps, catwalks, and dockboards (bridge plates).

1915.88—1915.90 [Reserved].

Appendix A to Subpart E—Exit Capacity, Size and Marking

Appendix B to Subpart E—Ladders

Subpart E—Access and Egress

§ 1915.71 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart applies to all means of access and egress used in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR Part 1926. Access requirements for scaffolds are contained in Subpart N of this Part.

(2) The provisions of 29 CFR 1910.21, 1910.22(b), 1910.22(c), and 1910.23 through 1910.40 do not apply to shipyard workplaces and operations.

(3) Facilities or equipment installed or used prior to (Insert date 30 days after date of publication of the final rule in the Federal Register) may comply with the requirements in brackets ([]) in this subpart in lieu of the corresponding unbracketed requirements.

(b) *Definitions applicable to this subpart.*

"Approved components" means equipment listed or approved by a nationally recognized testing laboratory.

"Barge" means an unpowered, flat bottomed, shallow draft vessel—including scows, carfloats and lighters. For purposes of this subpart, the term does not include ship shaped or deep draft barges.

"Cleave" means a ladder crosspiece of rectangular cross section placed on edge upon which a person may step while ascending or descending a ladder.

"Cleave" also means a transverse strip of material such as wood or metal placed on duckboards, ramps, gangways, and similar surfaces to provide footing.

"Double cleat ladder" means a ladder similar in construction to a single cleat ladder, but with a center rail to allow simultaneous two-way traffic for employees ascending or descending.

"Emergency escape route" means the route that employees are directed to follow in the event they must evacuate the workplace or seek a designated refuge area.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Exit" means that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in this subpart to provide a protected way of travel to the exit discharge.

"Exit access" means that portion of a means of egress which leads to an exit.

"Exit discharge" means that portion of a means of egress between the termination of an exit and an area away from the workplace.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Fixed ladder" means a ladder which cannot be readily moved or carried because it is an integral part of a building or structure. A "side-step fixed ladder" is a fixed ladder that requires a person getting off at the top to step to the side of the ladder siderails in order to reach the landing. A "through-fixed ladder" is a fixed ladder that requires a person getting off at the top to step between the siderails of the ladder in order to reach the landing.

"Handrail" means a rail to provide employees a handhold for support.

"High hazard contents" means those materials which are liable to burn with extreme rapidity, or from which poisonous fumes or explosions are likely in the event of fire.

"In dry dock" means the situation where a vessel is placed in a graving dock, basin, dry dock, or on a marine railway.

"Jacob's ladder" means a ladder consisting of rope or chain sides with rungs made of rigid materials.

"Ladder safety device" means a system other than a cage or well, designed to help prevent falls from ladders, or to limit the length of such falls. A ladder safety device usually consists of a carrier, safety sleeve, and body belt or harness.

"Low hazard contents" means those materials of such low combustibility that no self-propagating fire therein can occur, and that the only probable danger requiring the use of emergency exits will be from panic, fumes, smoke, or fire from some external source.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, decks, flats, docks, floors, roofs, ramps, gangways, grates, piers, wharves, runways, excavations, pits, tanks, materials, water, equipment, and other surfaces.

"Maximum intended load" means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied at any one time to a ladder or ramp component.

"Means of access" means ladders, stairways, ramps, runways, gangways, walkways, catwalks, dockboards, and personnel hoists.

"Means of egress" means a continuous and unobstructed way of exit travel from any point in a building or structure to an area away from hazards, and consists of three separate and distinct parts: The exit access; the exit; and the exit discharge. A means of egress comprises the vertical and horizontal ways of travel, and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairways, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

"Nosing" means that portion of a stairway tread projecting beyond the face of the riser immediately below.

"Ordinary hazard contents" means those materials which are liable to burn with moderate rapidity and give off a considerable volume of smoke, but from which neither poisonous fumes nor explosions are likely in case of fire.

"Portable ladder" means a ladder that can be readily moved or carried.

"Riser height" means the vertical distance from the top of a tread to the top of the next higher or lower tread.

"River tow boat" means a shallow draft, low free board, self-propelled vessel designed to tow river barges by pushing ahead. For purposes of this section, the term does not include other towing vessels.

"Single cleat ladder" means a ladder consisting of a pair of siderails, connected together by cleats, rungs, or steps.

"Stairrail system" means a vertical barrier erected along the unprotected sides and edges of a stairway to prevent employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

"Tread width" means the horizontal distance from front to back of a tread (including nosing, if any).

"Unprotected sides and edges" means any side or edge (except at entrances to points of access) of a stairway where there is no stairrail system or wall 36

inches (.9 m) [Grandfather provisions: 30 inches (76 cm); see § 1915.71(a)(3)] or more in height, and any side or edge (except at entrances to points of access) of a stairway landing, or ladder platform, where there is no wall or guardrail system at least 39 inches (1 m) [36 inches (91.5 cm)] high.

"Vessel section" means a sub-assembly, module, or other component of a vessel being built, repaired, or broken.

§ 1915.72 General requirements for means of access.

(a) *Where required.* A stairway, ladder, ramp, runway, gangway, walkway, catwalk, dockboard, or personnel hoist shall be provided at all personnel points of access with breaks of 19 inches (48.3 cm) or more in elevation where operations necessitate regular travel between levels (including access to operating platforms on all equipment which requires attention routinely during operations). Spiral stairways shall not be used to satisfy this requirement except where they provide the only practical means of access.

(b) *When required.* All means of access required by this subpart shall be provided and installed, and installation duties performed, before employees begin work from the work surface where protection is required.

§ 1915.73 Access to vessels.

(a) *Access to vessels afloat.* The employer shall not permit employees to board or leave any vessel, except a barge or river towboat, until the following requirements have been met:

(1) A gangway shall be used whenever practicable. If a gangway is not practicable, a portable ladder shall be used. When conditions are such that neither a gangway nor a portable ladder can be used, a Jacob's ladder shall be used.

(2) The gangway shall be kept properly trimmed at all times.

(3) When a fixed tread accommodations ladder is used, and the angle is so low as to require employees to walk on the edge of the treads, cleated duckboards shall be laid over and secured to the ladder.

(4) When the lower end of a gangway overhangs the water between the ship and the dock such that there is danger of employees falling between the ship and the dock, a net or other equivalent protection shall be rigged at the foot of the gangway to prevent employees from falling into the water.

(5) If the foot of the gangway is more than one foot away from the edge of the

apron, the space between them shall be bridged by a walkway.

(6) Supporting bridges shall be kept clear so as to permit unobstructed passage for employees using the gangway.

(7) When the upper end of the means of access rests on or is flush with the top of the bulwark, a stairway secured to prevent displacement shall be provided between the top of the bulwark and the deck.

(8) Obstructions shall not be laid on or across means of access.

(9) The means of access shall be adequately illuminated for its full length.

(10) Unless the construction of the vessel makes it impossible, all means of access shall be so located that drafts of cargo do not pass over them. In any event, loads shall not be passed over the means of access while employees are on the means of access.

(b) *Access to vessels in drydock, and between vessels.* The following requirements apply to access from wingwall to vessel and, when two or more vessels are lying abreast (other than barges or river towboats), from one vessel to another.

(1) Gangways, ramps, or access towers shall be used for access whenever practicable. When such means are not practicable, a portable ladder shall be used. When conditions are such that portable ladders cannot be used, a Jacob's ladder shall be used.

(2) When the upper end of the means of access rests on or is flush with the top of the bulwark, a stairway secured to prevent displacement shall be provided between the top of the bulwark and the deck.

(3) Obstructions shall not be laid on or across means of access.

(4) The means of access shall be adequately illuminated for its full length.

(c) *Access to barges and river towboats.* The following requirements apply to all employee and vehicle access to barges and river towboats:

(1) When employees cannot step safely to or from the wharf, float, barge, or river towboat, a gangway, ramp, or walkway shall be used. If a gangway, ramp, or walkway is not practicable, a portable ladder shall be used. When conditions are such that a gangway, ramp, walkway, or portable ladder cannot be used, then a Jacob's ladder shall be used.

(2) If the foot of the gangway is more than one foot away from the edge of the apron, the space between them shall be bridged by a walkway.

(3) When the upper end of the means of access rests on or is flush with the top of the bulwark, a stairway secured to

prevent displacement shall be provided between the top of the bulwark and the deck.

(4) Obstructions shall not be laid on or across means of access.

(5) The means of access shall be adequately illuminated for its full length.

§ 1915.74 Access to drydocks and drydock wingwalls.

(a) *Access to drydocks.* A gangway, ramp, or stairway shall be provided between a floating drydock and the pier or bulkhead.

(b) *Access to drydock wingwalls.* A ramp, stairway, or ladder shall be provided between wing walls and drydock floors.

§ 1915.75 Access to cargo spaces and confined spaces aboard vessels and vessel sections.

(a) *Cargo spaces.* (1) There shall be at least one safe and accessible ladder in all cargo spaces into which employees must enter or in which employees are working.

(2) The ladder shall not be used when cargo, dunnage, or other materials are stowed within four inches of the back of ladder rungs.

(3) When any shipboard fixed ladder is visibly unsafe, the employer shall prohibit its use by employees.

(4) Portable ladders shall be provided when shipboard fixed ladders in cargo spaces do not meet the requirements of paragraphs (a)(1), (2), or (3) of this section. When a portable ladder cannot be used, a Jacob's ladder shall be used.

(5) Shipboard fixed ladders and portable ladders provided for access to cargo spaces shall not be used at the same time that cargo drafts, equipment, materials, scrap or other loads are entering or leaving the hold.

(6) During the handling of materials, employees shall be required to inform the winchman or crane signalman of their intentions before using a ladder to enter or leave the cargo space.

(b) *Confined spaces.* (1) More than one access opening shall be provided to a shipboard confined space in which employees are working, and in which the work could generate a hazardous or explosive atmosphere in the space. However, this provision does not apply where the structure or arrangement of the vessel or vessel section makes this provision impractical, or where the vessel design is based on the rules of nationally and internationally recognized classification societies, or USCG specifications which require only one means of access to be provided to the confined space in question.

(2) When a confined space has only one access opening, and when one or

more ventilation ducts must pass through the access opening, the ducts shall be of such a type and so arranged as to permit free passage of employees through the access opening. When a confined space has two or more access openings, and when one or more ventilation ducts must pass through the access openings, the ducts shall be of such a type and so arranged as to permit free passage of employees through at least two of the access openings.

§ 1916.76—1915.79 [Reserved].

§ 1915.80 General requirements for means of egress from buildings and structures.

The following provisions do not apply to vessels or vessel sections.

(a) *Exits.* (1) Every building or structure, new or old, designed for human occupancy shall be provided with exits sufficient in kind, location, and capacity to permit the prompt escape of occupants in case of fire or other emergency. Exits which meet the guidelines in Appendix A will be deemed to meet the capacity requirement of this provision.

(2) In every building or structure, exits shall be so arranged and maintained as to provide employees with free and unobstructed egress from all parts of the building or structure at all times.

(3) Exits may not be locked or fastened in a manner which will prevent free escape from the inside of any building or structure. Any device or alarm installed to restrict the improper use of an exit shall be so designed and installed that it cannot, even in cases of failure, impede or prevent emergency use of such exit.

(4) Every exit shall be clearly visible, or the route to reach it shall be conspicuously indicated in such a manner that every physically and mentally capable occupant of every building or structure will readily know the direction of escape from any point.

(5) Any doorway or passageway not constituting an exit or way to reach an exit, but which might otherwise be mistaken for an exit, shall be marked "No Exit", or similar designation, or shall be identified by a sign indicating the actual character such as "To Basement," "Storeroom," "Closet," or the like.

(b) *Exit illumination.* In every building or structure equipped for artificial illumination, adequate and reliable illumination shall be provided for all exit facilities.

(c) *Alarms.* In every building or structure of such size, arrangement, or occupancy that a fire may not itself provide adequate warning to occupants, fire alarm facilities shall be provided

where necessary to warn occupants of the existence of fire so that they may escape, and to facilitate the orderly conduct of fire exit drills.

(d) *Multiple exits required.* Every building or structure, section, or area thereof of such size, occupancy, and arrangement that the safety of employees may be endangered by the blocking of any single means of egress due to fire or smoke, shall have at least two means of egress remote from each other, so arranged as to minimize any possibility that both may be blocked by any one fire or other emergency conditions.

(e) *Protection of employees during construction, repair or alteration.* (1) No building or structure under construction shall be occupied in whole or in part until all exit facilities required for the part occupied are completed and ready for use.

(2) No existing building or structure shall be occupied during repairs or alterations unless all existing exits and any existing fire protection are continuously maintained, or unless other measures are taken which the employer can demonstrate will provide equivalent safety.

(3) No flammable or explosive substances or equipment for repairs or alterations shall be introduced in a building of low or ordinary hazard classification while the building is occupied, unless the condition of use and the safeguards provided are such as not to create any additional danger or handicap to egress.

(f) *Maintenance.* (1) Every required exit, way of approach thereto, and way of travel from the exit into the street or open space, shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.

(2) Every automatic sprinkler system, fire detection and alarm system, exit lighting, fire door, and other item of equipment, where provided, shall be continuously in proper operating condition. Periodic inspections and tests shall be made as are necessary to assure proper maintenance.

§ 1915.81 Specific requirements for means of egress from buildings and structures.

(a) *Permissible exit components.* An exit shall consist only of approved components. Exit components shall be constructed as an integral part of the building or shall be permanently affixed thereto.

(b) *Protective enclosure of exits.* When an exit is protected by walls, partitions, barriers, or other construction which separates the exit from other

parts of the building, the separating construction shall meet the following requirements:

(1) The separation shall have at least a one-hour fire resistance rating when the exit connects three stories or less. This applies whether the stories connected are above or below the story at which exit discharge begins.

(2) The separation shall have at least a two-hour fire resistance rating when the exit connects four or more stories, whether above or below the floor of discharge. It shall be constructed of noncombustible materials, and shall be supported by construction having at least a two-hour fire resistance rating.

(3) Any opening therein shall be protected by an approved self-closing fire door.

(4) Openings in exit enclosures shall be confined to those necessary for access to the enclosure from normally occupied spaces and for egress from the enclosure.

(c) *Arrangement of exits.* When more than one exit is required from a building, structure, or section or area of a building or structure, at least two of the exits from any multi-exit area shall be remote from each other and so arranged as to minimize any possibility that both may be blocked by any one fire or other emergency condition.

(d) *Access to exits.* (1) Where exits are not immediately accessible from an open floor area, safe and continuous passageways, aisles, or corridors leading directly to every exit shall be maintained, and so arranged as to provide convenient access for each occupant to at least two exits by separate ways of travel, except as a single exit or limited dead ends are permitted by other provisions of this subpart.

(2) A door from a room to an exit or to a way of exit access shall be of the side-hinged, swinging type. The door shall swing with exit travel when the room is occupied by more than 50 persons or used for a high hazard occupancy.

(3) In no case shall access to an exit be through a bathroom, or other room subject to locking, except where the exit is required to serve only the room subject to locking.

(4) Exit access shall be so arranged that it will not be necessary to travel toward any area of high hazard occupancy in order to reach the nearest exit, unless the path of travel is effectively shielded from the high hazard location by suitable partitions or other physical barriers.

(e) *Exterior routes of exit access.* (1) Exterior routes of exit access shall have smooth, solid, and level floors.

(2) Snow and ice shall be removed from all exposed routes of exit access.

(3) A permanent, unobstructed straight path of travel shall be maintained free of all obstructions, including railings, barriers, gates, and impediments over the required exterior way of exit access. Furniture or other movable objects that result in obstruction to travel shall be fastened out of the way or railings or other permanent barriers shall be installed to protect the path of travel against encroachment.

(4) An exterior way of exit access shall be so arranged that it does not contain any dead end sections in excess of 20 feet (6.1 m). Any unenclosed exit served by an exterior way of exit access shall be so located that no part of the exit extends past a vertical plane 20 feet (6.1 m) and one half the required width of the exit from the end of and at right angles to the way of exit access.

(f) *Discharge from exits.* (1) All exits shall discharge directly to the street, or to a yard, court, or other open space that gives access away from the hazard.

(2) Yards, courts, or streets, or other open spaces to which exits discharge shall be of a size that allows all persons leaving the building to get away from the hazard.

(3) Stairs and other exits shall be so arranged as to make clear the direction of egress to the street.

(4) Exit stairs that continue beyond the floor of discharge shall be interrupted at the floor of discharge by partitions, doors, or other effective means.

(g) *Changes in elevation.* Stairs or ramps shall be installed at all means of egress which are not level.

(h) *Furnishings and decorations.* (1) No furnishings, decorations, or other objects shall be so placed as to conceal, obscure, or obstruct access to, or egress from, exits.

(2) Mirrors shall not be placed on exit doors nor placed in or adjacent to any exit.

(3) No furnishings or decorations of an explosive or highly flammable character shall be used in any occupancy.

(4) Decorations, furnishings, and equipment shall not impair the visibility of exit signs, nor shall any brightly illuminated sign (for other than exit purposes), display, or object in or near the line of vision to the required exit sign be of such a character as to so detract attention from the exit sign such that it may not be noticed.

(i) *Exit marking.* (1) A sign reading "Exit", or similar designation, shall mark every exit.

(2) Every required sign designating an exit or way of exit access shall be so

located and of such size, color, and design as to be readily visible.

(3) Every exit sign shall be distinctive in color and shall provide contrast with decorations, interior finish, or other signs.

(4) A sign reading "Exit," or similar designation, with an arrow indicating the direction, shall be placed in every location where the direction of travel to reach the nearest exit is not immediately apparent.

(5) Every exit sign shall be illuminated by a light source giving a value of not less than five foot-candles on the illuminated surface. Artificial lights giving external illumination to exit signs shall have screens, discs, or lenses of not less than 25 square inches area made of translucent material to show red or other specified designating color on the side of the approach.

(6) Internally illuminated exit signs shall be used in all occupied buildings where reduction of normal illumination is permitted.

(j) *Fire retardant paints.* Fire retardant paints or solutions shall be renewed at such intervals as necessary to maintain the necessary flame retardant properties.

§ 1915.82 Aisles and passageways in buildings and structures.

(a) *Clearances.* (1) Where mechanical handling equipment is used, safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made.

(2) Forging machines shall be so located as to give clearance between machines so that the movement of one operator will not interfere with the work of another.

(3) Forging machines shall be so located as to give room for cleaning machines and handling the work, including material and scrap.

(4) Forging machines shall be so located that operators do not have to stand in aisles in order to operate the machine.

(b) *Obstructions.* (1) Where mechanical handling equipment is used, aisles and passageways shall be maintained free of all obstructions and impediments that could create a hazard.

(2) Aisles shall be of a size that allows the free movement of employees bringing and removing material. This aisle space is to be independent of working and storage space.

(c) *Markings.* Permanent aisles and passageways shall be marked to indicate their status as aisles and passageways.

§§ 1915.83—1915.84 [Reserved]

§ 1915.85 Stairways.

(a) *General.* The following requirements apply to all stairways including those used at points of vessel access between the tops of bulwarks and decks, and between floating drydocks and piers or bulkheads:

(1) Stairway landings shall extend not less than 30 inches (76 cm) in the direction of travel.

(2) Stairs shall be installed between 30° and 50° from horizontal.

(3) Riser height and tread width shall be uniform within each flight of stairs, including any foundation structure used as one or more treads of the stairs.

(4) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width of the platform to less than 20 inches (51 cm).

(5) Vertical clearance above any stair tread to an overhead obstruction shall be at least seven feet (2.1 m) measured from the leading edge of the tread.

(6) Stairways shall be capable of supporting, without failure, their own weight and at least five times the maximum intended load applied to the stairway, or their own weight and a concentrated moving live load of 1,000 pounds (456 kg), whichever is greater.

(7) Stairways shall be at least 22 inches (56 cm) [Grandfather provisions: 20 inches (51 cm); see § 1915.71(a)(3)] wide.

(8) Welded bar grating treads without nosings shall have leading edges which can be readily seen by personnel descending the stairway.

(9) Welded bar grating treads shall be serrated or of nonslip design.

(10) All parts of stairways shall be free of hazardous projections, such as protruding nails.

(11) Winding stairways shall have a minimum inside diameter of five feet (1.5 m).

(12) Stairways used at vessel points of access shall be secured to prevent displacement.

(b) *Stairrails and handrails.* The following requirements apply to all stairways (except those which are part of a vessel) regardless of their height above lower levels:

(1) Stairways having four or more risers shall be equipped with:

(i) At least one handrail; and

(ii) one stairrail system along each unprotected side or edge. Stairrail systems may also serve as handrails when installed in conformance with paragraph (c)(7) of this section.

(2) Winding and spiral stairways shall be equipped with a handrail offset such

that it prevents walking on those portions of the stairways where the tread width is less than six inches (15 cm).

(3) The height of stairrails shall be not less than 36 inches (91.5 cm)

[Grandfather provisions: 30 inches (76 cm); see § 1915.71(a)(3)] from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at forward edge of the tread, and not less than 39 inches (1.0 m) [Grandfather provisions: 36 inches (91.5 cm); see § 1915.71(a)(3)] nor more than 45 inches (1.1 m) from the upper surface of the stairrail system to the surface of stairway landings.

(4) Midrails, screen, mesh, intermediate vertical members, or equivalent structural members, shall be provided between the top rail of the stairrail system and the stairway steps.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members shall be installed such that there are no openings in the stairrail system that are more than 19 inches (48 cm) wide in their least dimension.

(5) Handrails and the top rails of stairrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 N) applied within two inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(6) The height of handrails shall be not more than 37 inches (94 cm) nor less than 30 inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(7) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than 37 inches (94 cm) nor less than 36 inches (91.5 cm) [Grandfather provisions: 30 inches (76 cm) see § 1915.71(a)(3)] from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(8) Stairrail systems and handrails shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(9) Handrails shall be shaped to permit a grip by employees grasping them to avoid falling.

(10) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(11) Handrails shall have a minimum clearance of one and one-half inches (4 cm) between the handrail and walls, stairrail system, and other objects.

§ 1915.86 Ladders.

(a) *General.* The following requirements do not apply to ladders which are a permanent part of a vessel or vessel section; however, they do apply to all other ladders as indicated, including portable ladders used on vessels and vessel sections, and those used for access to scaffolds and to support scaffold platforms.

(1) Ladders shall be capable of supporting the following loads without failure:

(i) Each portable ladder and job-made ladder: At least four times the maximum intended load applied or transmitted to the ladder in a downward vertical direction when the ladder is placed at an angle of 75½ degrees from the horizontal. Ladders built in conformance with the guidelines in Appendix B will be deemed to meet this requirement;

(ii) Each fixed ladder: At least two loads of 250 pounds (114 kg) each, concentrated between any two consecutive attachments (the number and position of additional concentrated loads of 250 pounds (114 kg) each, determined from anticipated usage of the ladder, shall also be included), plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. Each step or rung shall be capable of supporting a single concentrated load of at least 250 pounds (114 kg) applied in the middle of the step or rung. Ladders built in conformance with the guidelines in Appendix B will be deemed to meet these requirements.

(2) Ladder rungs, cleats, and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(3)(i) Rungs, cleats, and steps of portable and fixed ladders shall be spaced not less than six inches (15 cm) apart, nor more than 12 inches (31 cm) apart, as measured along the ladder siderails.

(ii) Rungs, cleats, and steps of individual step or rung ladders shall be not less than six inches (15 cm) apart, nor more than 16½ inches (42 cm) apart, as measured between the centerlines of the rungs, cleats, and steps.

(4) Rungs, cleats, and steps shall have a minimum clear length of 16 inches (41 cm) for individual-rung and fixed ladders, 12 inches (30 cm) for portable metal ladders and reinforced plastic ladders, and 11 1/2 inches (29 cm) for portable wood ladders.

(5) The rungs of individual-rung ladders shall be shaped such that an employee's feet cannot slide off the ends of the rungs.

(6) The rungs and steps of metal ladders shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(7) Jacob's ladders shall be of the double rung or flat tread type.

(8) Ladders shall not be tied or fastened together to provide longer sections, unless they are specifically designed for such use.

(9) When splicing is required to obtain a given length of siderail, the resulting siderail must be at least equivalent in strength to a one-piece siderail made of the same material.

(10) A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an open position when the ladder is being used.

(11) Ladder components shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(12) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a siderail.

(13) When two or more separate ladders are used to reach an elevated work area, the ladders shall be offset with a platform or landing installed between the ladders, equipped with guardrails and toeboards.

(14) The minimum perpendicular clearance between fixed ladder rungs, cleats, and steps, and any obstruction behind the ladder shall be seven inches (18 cm).

(15) The minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm), except as provided in paragraph (a)(16) of this section.

(16) When unavoidable obstructions are encountered, the minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and the obstruction on the climbing side of the ladder may be reduced to 24 inches (61 cm), provided that a deflection device is installed to guide employees around the obstruction.

(17) Through-fixed ladders at their point of access/egress shall have a step-across distance of not less than seven inches (18 cm) nor more than 12 inches (30 cm) as measured from the centerline of the steps or rungs to the nearest edge of the landing area. If the normal step-across distance exceeds 12 inches (30 cm), a landing platform shall be provided to reduce the distance to the specified limit.

(18) Fixed ladders without cages or wells shall have a clear width to the nearest permanent object of at least 15 inches (38 cm) on each side of the centerline of the ladder.

(19) Fixed ladders shall be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet (7.3 m), but the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.

(20) Where the total length of a climb equals or exceeds 24 feet (7.3 m), fixed ladders (except those used only for firefighting or emergency escape purposes) shall be equipped with one of the following:

(i) Ladder safety devices; or

(ii) Self-retracting lifelines and rest platforms at intervals not to exceed 150 feet (45.7 m); or

(iii) A cage or well, and multiple ladder sections, each ladder section not to exceed 50 feet (15.2 m) in length. Ladder sections shall be offset from adjacent sections, and landing platforms shall be provided at maximum intervals of 50 feet (15.2 m).

(21) Cages for fixed ladders shall conform to all of the following:

(i) Horizontal bands shall be fastened to the siderails of rail ladders, or, for individual rung ladders, directly to the structure, building, or equipment;

(ii) Vertical bars shall be on the inside of the horizontal bands and shall be fastened to them;

(iii) Cages shall extend not less than 27 inches (68 cm), nor more than 30 inches (76 cm) from the centerline of the step or rung (excluding the flare at the bottom of the cage), and shall not be less than 27 inches (68 cm) in width;

(iv) The inside of the cage shall be clear of projections;

(v) Horizontal bands shall be spaced not more than four feet (1.2 m) on center vertically;

(vi) Vertical bars shall be spaced at intervals not more than nine and one-half inches (24 cm) on center horizontally;

(vii) The bottom of the cage shall be at a level not less than seven feet (2.1 m) nor more than eight feet (2.4 m) above the point of access to the bottom of the ladder. The bottom of the cage shall be

flared not less than four inches (10 cm) all around within the distance between the bottom horizontal band and the next higher band;

(viii) The top of the cage shall be a minimum of 42 inches (1.1 m) above the top of the platform, or the point of access at the top of the ladder, with provision for access to the platform or other point of access.

(22) Wells for fixed ladders shall conform to all of the following:

(i) They shall completely encircle the ladder;

(ii) They shall be free of projections;

(iii) Their inside face on the climbing side of the ladder shall extend not less than 27 inches (68 cm) nor more than 30 inches (76 cm) from the centerline of the step or rung;

(iv) The inside clear width shall be at least 30 inches (76 cm);

(v) The bottom of the wall on the access side shall start at a level not less than seven feet (2.1 m) nor more than eight feet (2.4 m) above the point of access to the bottom of the ladder.

(23) Ladder safety devices, and their support systems for fixed ladders, shall conform to all of the following:

(i) They shall be capable of withstanding, without failure, a drop test consisting of an 18 inch (41 cm) drop of a 500 pound (226 kg) weight;

(ii) They shall permit the employee using the device to ascend or descend without continually having to hold, push or pull any part of the device, leaving both hands free for climbing;

(iii) They shall be activated within two feet (.61 m) after a fall occurs, and limit the descending velocity of an employee to seven feet/sec (2.1 m/sec) or less;

(iv) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed nine inches (23 cm) in length.

(24) Ladder safety devices shall also conform to the following:

(i) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employees' falls.

(ii) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides utilized with a flexible carrier shall be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(iii) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

(25) The siderails of through or side step fixed ladders shall extend at least 42 inches (1.1 m) above the top of the access level or landing platform served by the ladder. For a parapet ladder, the access level shall be the roof if the parapet is cut to permit passage through the parapet; if the parapet is continuous, the access level shall be the top of the parapet.

(26) For through fixed ladder extensions on ladders not equipped with ladder safety devices, the steps or rungs shall be omitted from the extension, and the extension of the siderails shall be flared to provide not less than 24 inches (61 cm) [Grandfather provisions: 18 inches (46 cm); see § 1915.71(a)(3)] nor more than 30 inches (76 cm) clearance between siderails. Where ladder safety devices are provided, the maximum clearance between siderails of the extensions shall not exceed 36 inches (91 cm).

(27) For side step fixed ladders, the siderails and the steps or rungs shall be continuous in the extension.

(28) Individual rung ladders, except those used where their access openings are covered with a manhole covers or hatches, shall extend at least 42 inches (1.1 m) above access levels of landing platform, either by the continuation of the rung spacings as horizontal grab bars providing vertical grab bars that have the same lateral spacing as the vertical legs of the rungs.

(b) *Use.* The following requirements apply to the use of all ladders, as indicated.

(1) When portable ladders are used for access to an upper landing surface, the ladder siderails shall extend at least three feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at the top and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder.

(2) Ladders shall be maintained free of slipping hazards.

(3) Ladders shall not be loaded beyond their maximum intended load-carrying capacity, nor beyond their rated capacity.

(4) Ladders shall be used only for the purpose for which they were designed.

(5) Non-self-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-quarter of the working length of the ladder (the

distance along the ladder between the foot and the top support). Wood job-made ladders with spliced siderails shall be used at an angle such that the ratio is one-eighth the working length of the ladder. Fixed ladders shall be used at a pitch no greater than 90 degrees from the horizontal, as measured to the backside of the ladder.

(6) Ladders shall be used only on stable and level surfaces unless secured to prevent accidental displacement. Examples of unstable surfaces include, but are not limited to, boxes and barrels.

(7) Ladders shall not be used on slippery surfaces unless secured or provided with slip-resistant feet to prevent accidental displacement. Slip-resistant feet are not intended as a substitute for care in placing, lashing, or holding a ladder that is used upon oily, metal, concrete, or slippery surfaces.

(8) Ladders placed in passageways, doorways, driveways, or any location where they can be displaced by other activities or traffic, shall be secured to prevent accidental displacement, or a barricade shall be used to keep the activities or traffic away from the ladder.

(9) The area around the top and bottom of ladders shall be kept clear.

(10) The top of a non-self-supporting ladder shall be placed with the two rails supported by the building or structure, unless the ladder is equipped with a single-support type attachment.

(11) Ladders shall not be moved, shifted, or extended while occupied.

(12) Ladders shall have non-conductive siderails when used where the ladder could contact energized electrical equipment, or when used by employees performing electric arc welding operations.

(13) The tops of stepladders shall not be used as steps.

(14) Crossbracing on stepladders shall not be used for climbing.

(15) Ladders shall be inspected for visible defects periodically, preferably before each use, and after any occurrence which could affect their safe use.

(16) Ladders with structural defects, such as broken or missing rungs, cleats, or steps; broken or split rails; excessively corroded or rusted components; frayed or badly worn rope; or other faulty or defective components shall be immediately tagged with "Do not use" or similar language, and withdrawn from service until repaired.

(17) Ladder repairs shall restore the ladder to a condition meeting its original design criteria.

(18) Single rail ladders shall not be used, except for emergency or rescue operations.

(19) Jacob's ladders shall either hang without slack from their lashings, or be pulled up entirely.

(20) Employees visually restricted by blasting hoods, welding helmets, and burning goggles shall not work from ladders, except where necessary for the initial and final welding or burning operation to start or complete a job—such as the erection and dismantling of scaffolding, or other similar, nonrepetitive jobs of brief duration.

(21) Employees ascending or descending ladders shall face the ladder.

§ 1915.87 Gangways, walkways, ramps, catwalks, and dockboards (bridge plates).

(a) *Gangways and walkways.* Gangways and walkways shall be not less than 20 inches (51 cm) wide, capable of supporting the maximum intended load without failure, maintained in safe repair, and secured to prevent displacement. Gangways on vessels inspected and certificated by the U.S. Coast Guard are deemed to meet the foregoing requirements, except in cases where the vessel's regular gangway is not being used.

(b) *Ramps.* (1) Ramps for employees shall be not less than 20 inches (51 cm) wide, capable of supporting the maximum intended load without failure, maintained in safe repair, and secured to prevent displacement.

(2) Ramps for access of vehicles to or between barges shall be capable of supporting the maximum intended load without failure, provided with sideboards, maintained in safe repair, and secured to prevent displacement.

(c) *Catwalks.* Catwalks on stiles of marine railways shall be not less than 20 inches (51 cm) wide, capable of supporting the maximum intended load without failure, maintained in safe repair, and secured to prevent displacement.

(d) *Dockboards (bridge plates).* (1) Portable and powered dockboards shall be strong enough to carry the load imposed on them.

(2) Portable dockboards shall be secured in position, either by being anchored or equipped with devices which will prevent their slipping.

(3) Powered dockboards shall be designed and constructed in accordance with Commercial Standard CS 202-56 (1961) "Industrial Lifts and Hinged Loading Ramps" published by the U.S. Department of Commerce.

(4) Handholds, or other effective means, shall be provided on portable dockboards to permit safe handling.

(5) Positive restraints shall be provided to prevent railroad cars from

being moved while dockboards or bridge plates are in position. Fall protection requirements for gangways, walkways, ramps, catwalks, and dockboards are set forth in Subpart M of this part.

§§ 1915.88—1915.90 [Reserved]

Appendix A to Subpart E—Exit Capacity, Size and Marking

This appendix serves as a non-mandatory guideline to assist employers in complying with the capacity and size requirements of § 1915.80(c)(2), and the marking requirements of § 1910.81(i)(2). Exits and exit access which meet the criteria set forth in this Appendix are deemed to comply with the capacity provisions of § 1915.80(c)(2), and the marking requirements of § 1910.81(i)(2).

General. Every building or structure shall be so constructed, arranged, equipped, maintained, and operated as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

The design of exits and other safeguards shall be such that reliance for safety to life in case of fire or other emergency will not depend solely on any single safeguard; additional safeguards shall be provided for life safety in case any single safeguard is ineffective due to some human or mechanical failure.

1. **Width and capacity of means of egress.** The capacities in number of persons per unit of exit width for approved components of means of egress are as follows:

- (i) Level Egress Components (including Class A Ramps) 100 persons.
- (ii) Inclined Egress Components (including Class B Ramps) 60 persons.
- (iii) A ramp is designated as Class A or Class B in accordance with the following Table A-1:

TABLE A-1

	Class A	Class B
Width.....	44 inches and greater.	30 to 44 inches.
Slope.....	1 to 1½ inches in 12 inches.	1½ to 2 inches in 12 inches.
Minimum height between landings.	No limit.....	12 feet.

Means of egress are to be measured in units of exit width of 22 inches. Fractions of a unit are not to be counted, except that 12 inches added to one or more full units are to be counted as one-half a unit of exit width.

Units of exit width are to be measured in the clear at the narrowest point of the means of egress, except that a handrail may project inside the measured width on each side not more than five inches, and a stringer may project inside the measured width not more than one and one-half inches. An exit or exit access door swinging into an aisle or passageway may not restrict the effective width thereof at any point during its swing to

less than the minimum widths specified below.

2. **Egress capacity and occupant load.** The capacity of means of egress for any floor, balcony, tier, or other occupied space must be sufficient for the maximum number of persons that may be in the space at any time.

Where exits serve more than one floor, only the occupant load of each floor considered individually need be used in computing the capacity of the exits at that floor, provided that exit capacity is not decreased in the direction of exit travel.

The width of any way of exit access may not be less than 28 inches. Where a single way of exit access leads to an exit, its capacity in terms of width is to be at least equal to the required capacity of the exit to which it leads. Where more than one way of exit access leads to an exit, each is to have a width adequate for the number of persons it must accommodate.

3. **Headroom.** Means of egress shall be so designed and maintained as to provide adequate headroom, but in no case shall the ceiling height be less than 7 feet 6 inches nor any projection from the ceiling be less than 6 feet 8 inches from the floor.

4. **Exit markings.** Every exit sign shall have the word "Exit" in plainly legible letters not less than six inches high, with the principal strokes of the letters not less than three-fourths inch wide.

Appendix B to Subpart E—Ladders

This appendix serves as a non-mandatory guideline to assist employers in complying with the ladder loading and strength requirements of § 1915.86(a)(1). A ladder designed and built in accordance with the applicable national consensus standards, as set forth below, will be considered to meet the requirements of § 1915.86(a)(1).

1. **Manufactured portable wood ladders:** American National Standards Institute (ANSI) A14.1-1982—American National Standard for Ladders—Portable Wood—Safety Requirements.

2. **Manufactured portable metal ladders:** ANSI A14.2-1982—American National Standard for Ladders—Portable Metal—Safety Requirements.

3. **Manufactured fixed ladders:** ANSI A14.3-1984—American National Standard for Ladders—Fixed—Safety Requirements.

4. **Job-made ladders:** ANSI A14.4-1979—Safety Requirements for Job-Made Ladders.

5. **Plastic ladders:** ANSI A14.5-1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements.

[FR Doc. 88-27000 Filed 11-28-88; 8:45 am]

BILLING CODE 4510-28-M

29 CFR Part 1915

[Docket No. S-045]

Personal Protective Equipment for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing personal protective equipment. The standards proposed for revision regulate the design, availability, and use of personal protective equipment in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action would consolidate, reorganize, and update the shipyard personal protective equipment standards and the appropriate general industry personal protective equipment standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposal would, where appropriate, delete existing specification provisions which currently limit employer innovation and use performance-oriented provisions to address the hazards of falling or being struck by falling or flying objects. The proposal would also add criteria for personal fall protective equipment which are not currently set forth in either Part 1910 or Part 1915.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-045, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200

Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Chappell D. Pierce, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 8(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered by Parts 1915, 1916, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard employments not specifically addressed in the consolidated Part 1915 (See 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work

activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when existing Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these parts since they were promulgated in 1971. OSHA believes that some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards will be updated to reference the most current national consensus standards for the *design* of personal protective equipment (PPE). Requirements for the selection, care and use of, and training in, PPE will be proposed for inclusion in the body of the proposed standard. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915, except for the design requirements for PPE, which are normally not used by employers or employees, but rather by manufacturers of PPE. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

The current standards for shipyard personnel protective equipment, 29 CFR Part 1915, Subpart I, apply to personal protective equipment used in shipyard workplaces and operations, including shipbuilding, ship repairing and shipbreaking. Those standards, however, are not comprehensive. They must be supplemented by general industry standards in Part 1910, Subpart I, in areas, such as the design and use of personal protective equipment, which are not specifically addressed by the shipyard employment standards. OSHA believes that consolidating all personal protective equipment standards applicable to shipyard employment into a single, comprehensive set of standards in Part 1915 will facilitate understanding of the rules and, as a result, provide at least as effective, if not improved, protection of shipyard employees exposed to respiratory hazards, fall hazards and the hazards of being struck by falling or flying objects.

OSHA proposes to revise Subpart I of 29 CFR Part 1915 to incorporate those requirements of 29 CFR Part 1910, Subpart I, which OSHA has determined are applicable to shipyard employment.

The requirements of proposed Subpart I would apply to personal protective equipment (PPE) in shipyard workplaces and operations, including shipbuilding, ship repairing, and shipbreaking, except for construction work covered by 29 CFR Part 1926. The proposal would consolidate the current PPE provisions of Part 1915 with the applicable provisions of 29 CFR Part 1910, Subpart I, including all of § 1910.134, Respiratory protection.

At present, § 1910.134 supplements the limited coverage of respiratory protection which is found in § 1915.152 of the shipyard standards. The proposal would delete § 1915.152 and apply § 1910.134 in its entirety to shipyard employment. Deletion of § 1915.152 will not substantively change the current respirator coverage for shipyards, since the requirements currently in that section are also found in § 1910.134.

Although § 1910.134 would continue to apply to shipyards under the proposal, the substantive requirements for respiratory protection in shipyards are not open for revision as part of this rulemaking. As noted below, OSHA is aware that much of § 1910.134 needs to be reexamined in light of changes in technology and industrial hygiene practice which have occurred in recent years. Therefore, OSHA has prepared a separate draft revision to § 1910.134

which involves a highly complex rulemaking effort that cuts across industry lines. Respiratory protection requirements need to be consistent to provide adequate protection whenever respirators are used. For the present, therefore, OSHA will continue to apply § 1910.134 to shipyards, pending the future rulemaking on that standard, which is expected to be proposed soon. When § 1910.134 is promulgated, these revisions will be applicable to the shipyard standards. The Agency's approach to shipyard respiratory protection is explained further in the discussion below of proposed § 1915.154.

OSHA also proposes to change the format of Part 1915, Subpart I, to accommodate the consolidated 1910 and 1915 provisions. New section numbers and section headings are proposed wherever it would facilitate understanding of the rules, and where otherwise necessary to accommodate applicable provisions of Part 1910 which have no counterpart in the existing structure of Subpart I, Part 1915. The revised format of Part 1915, Subpart I, would contain the following sections:

- § 1915.151—Scope, application, and definitions applicable to this subpart.
- § 1915.152—General requirements.
- § 1915.153—Eye and face protection.
- § 1915.154—Respiratory protection.
- § 1915.155—Head Protection.
- § 1915.156—Foot protection.
- § 1915.157—Hand and body protection.

§ 1915.158—Lifesaving equipment.
§ 1915.159—Personal fall protection equipment.

The provisions of the current Subpart I standards, §§ 1915.151 through 1915.154, are being revised, supplemented and reorganized as set forth in the table which appears below.

Current standard	Proposed standard
§ 1915.151(a)(1).....	§ 1915.153(b)
§ 1915.151(a)(2).....	§ 1915.152(c)
§ 1915.151(a)(3).....	§ 1915.152(d)
§ 1915.151(a)(4).....	§ 1915.153(a)(4)
§ 1915.151(b)(1).....	§ 1915.153(a)(1)
§ 1915.151(c)(1).....	§ 1915.153 (a)(1), (a)(5)
§ 1915.151(c)(2).....	§ 1915.153(a)(5)
§ 1915.151(c)(3).....	§ 1915.153(a)(5)
§ 1915.152.....	§ 1915.154
§ 1915.153(a).....	§ 1915.155(a)(1)
§ 1915.153(b).....	§ 1915.155 (a)(2), (b)
§ 1915.153(c).....	§ 1915.152(d)
§ 1915.153(d).....	§ 1915.152(a)
§ 1915.153(e).....	§ 1915.157(a)(2)
§ 1915.153(f).....	§ 1915.157(a)(1)
§ 1915.154(a)(1).....	§ 1915.158(a)
§ 1915.154(a)(2).....	§ 1915.158(c)
§ 1915.154 (b)(1)–(b)(3).....	§ 1915.159
§ 1915.154 (c)(1)–(c)(4).....	§ 1915.158 (b)(1)–(b)(5)

In addition to these sections, OSHA proposes to add a non-mandatory Appendix A, which provides guidelines for designing and testing personal fall protection equipment.

This format change will necessitate the change of references to specific sections of current Subpart I, contained in Subparts C and H of the shipyard standards, to the appropriate new

sections of proposed Subpart I. These changes of references, which are contained in this proposal, do not substantially change the requirements for the use of PPE in those subparts.

Provisions of Parts 1910 and 1915 which OSHA believes unnecessarily restrict employer innovation and the application of technological advances would be revised into performance-oriented standards. These changes are discussed more fully below.

OSHA has used the Bureau of Labor Statistics Work Injury Reports (WIR) on eye, face, foot and head injuries as a basis for determining the type of PPE-related injuries that occur (References 24, 25, 26, 27). Although these reports do not specifically include shipyard injuries, OSHA believes that the WIR data are representative of the types of PPE-related incidents in shipyards as well (See injury tables below. These tables are based on BLS surveys of injured workers, and do not reflect the universe of non-injured workers). This finding is supported by visits made by OSHA personnel to several shipyards in order to observe the use of personal protective equipment. The Agency has used the information gained from these visits and reports to develop effective provisions for shipyards. In addition, many proposed sections adopt language from current ANSI personal protective equipment standards.

EYE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-August 1979]

Item	All workers (100%)		Workers wearing eye protection (41%)	
	Number	Percent	Number	Percent
Total.....	1,052	100	435	100
Flying or falling object struck you.....	727	69	355	82
Struck non-moving object.....	21	2	5	1
Liquid or chemical injured you.....	216	21	59	14
Occurred in another way.....	88	8	16	4

(Workers not wearing eye protection = 59 percent)

Note.—This table does not reflect workers whose eye protection prevented injuries.

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-November 1979]

Item	Number of workers	Percent of workers
Total.....	774	100
Flying or falling objects struck you.....	344	44

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES—Continued

[July-November 1979]

Item	Number of workers	Percent of workers
Struck non-moving object.....	48	6
Liquid or chemical injured you.....	35	5
Swinging object struck face.....	154	20
Object or tool was pulled into face.....	114	15
Powered tool kicked back into face.....	33	4

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES—Continued

[July-November 1979]

Item	Number of workers	Percent of workers
Occurred in other way.....	46	6

Note.—This table does not reflect workers whose face protection prevented injuries.

FOOT INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

[July-August 1979]

Item	All workers (100%)		Workers wearing safety shoes (23%)	
	Number	Percent	Number	Percent
Total.....	1,251	100	283	100
Stepped on sharp object.....	194	16	24	8
Struck by falling object.....	721	58	191	67
Object rolled onto or over foot.....	168	13	36	13
Squeezed between.....	59	5	13	5
Struck foot against object.....	28	2	3	1
Occurred in another way.....	81	6	16	6

Note.—This table does not reflect workers whose foot protection prevented injuries.

HEAD INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

[July-September 1979]

Item	All workers (100%)		Workers wearing hard hats (16%)	
	Number	Percent	Number	Percent
Total.....	1,033	100	170	100
Head struck non-moving object.....	299	29	21	12
Swinging object struck.....	198	19	44	26
Falling object struck head.....	371	36	62	36
Flying object struck head.....	120	12	34	20
Occurred in another way.....	45	4	9	5

Note.—This table does not reflect workers whose head protection prevented injuries.

The current standards in Part 1915 also incorporate various national consensus standards by reference. OSHA proposes to update these incorporations by reference for the design requirements for PPE, and include the relevant requirements and other information that is directly applicable to employers in these documents within the text of the revised standards. The provisions affected by these deletions, current paragraphs §§ 1915.151(a)(1) and 1915.153(b), are discussed in more detail below. This approach would enable employers to determine what duties and obligations are imposed by part 1915 without referring to documents outside Part 1915, except for the design requirements for PPE, and in the case of respiratory protection.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the Agency has reviewed the various national consensus standards that cover working conditions addressed in this proposal. OSHA has incorporated appropriate provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate

the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to personal protective equipment.

Section 1915.151 Scope, application, and definitions applicable to this subpart.

Proposed paragraph (a) sets forth the scope and application of the proposal. This Subpart would apply to all personal protective equipment used in shipyard workplaces and operations, except that used in construction work covered by Part 1926. The personal protective equipment provisions of Subpart I of Part 1910 would no longer apply unless specifically referenced.

Proposed paragraph (b) defines key terms used in the proposed standard. While the proposed definitions are self-explanatory, several are discussed below to facilitate understanding of the fall protection provisions of this proposal.

"Deceleration device" is defined as a personal fall arrest system with

components which dissipate a substantial amount of energy during a fall arrest by means other than the simple stretching of a rope or line. It includes such devices as rope grabs, rip stitch lanyards, special woven lanyards, and automatic-self retracting lifelines, and excludes rope, wire, chain or webbing lanyards.

"Personal fall arrest system" is defined as the system and components that are used to arrest the fall of employees who have fallen from work surfaces. This type of system differs from a positioning device system in that the primary purpose of the personal fall arrest system is to *arrest* safely an employee who has fallen, while positioning device systems are used primarily to *prevent* a fall.

"Positioning device system" is defined as a system which is used to support or aid an employee in working with both hands free at a given work level.

"Restraint (tether) line" is defined as a device which is attached between the employee and an anchorage to prevent the employee from walking or falling off a work surface. It has been treated as a "positioning device system" in the proposed standard, although its function is somewhat different. It does not support an employee at a work level, but, rather, prevents the employee from

leaving the work level or work position. The forces encountered with a restraint line system are much less than those experienced with a fall arrest system, and are similar to those encountered with a positioning device system.

"Strength factor" is defined as the ratio of the strength of a personal fall arrest system to the arresting force which would be experienced by a human during a fall arrest. This term is used in proposed requirement § 1915.159(a)(4)(iv), discussed further below, which mandates that the personal fall arrest system be strong enough to withstand twice the design arresting force safely. For example, using a worker design weight of 250 pounds (113 kg), if a system were capable of limiting the arrest force to six times the worker's weight (arrest force of 1,500 pounds (6.67 kN) ($250 \times 6 = 1,500$)), the system strength would have to be at least 3,000 pounds (13.3 kN) in order to meet the strength factor requirement of two. (The test methods contained in Appendix B of this proposal could be used to demonstrate a strength factor of at least two.)

Section 1915.152 General requirements.

In paragraph (a), OSHA proposes that employers make available to their employees personal protective equipment for eyes, face, head, and extremities; protective clothing; protective shields and barriers; personal fall protection equipment; and life saving equipment whenever such equipment is necessary for employee protection. The employer shall ensure that the equipment is used. Personal protective equipment would include such items as hard hats, safety glasses, safety shoes, and work gloves. This paragraph is based on current §§ 1915.153(d) and 1910.132(a), which require the employer to make personal protective equipment available. Sections 1915.153-1915.158(b) of this proposal incorporate the duty to use the various types of equipment, as set out in current paragraph (a) of § 1910.132. In addition, the proposal provides criteria for selection and proper use of personal flotation devices (PFD) (§ 1915.158(a)) and personal fall protection equipment (§ 1915.159), but does not include requirements for where and when such equipment must be used. Such requirements will be included in another OSHA shipyard proposal on fall protection. Subpart M of Part 1915 (Docket No. S-046). For example, the Subpart M proposal would require PFD's for employees working on floating vessels where other protection, such as guardrails, is not provided. Subpart M

would also mandate the use of personal fall protection equipment for employees working on elevated work surfaces when other fall protection is not provided.

In paragraph (b), OSHA proposes that personal protective equipment be selected to protect employees from the particular hazards to which they are exposed. This language, while based on § 1910.133(a)(1), has been expanded so that it covers the selection of all personal protective equipment.

In paragraph (c), OSHA would bar the use of defective or damaged personal protective equipment. This paragraph is derived from existing §§ 1915.154(a)(2), 1915.154(b)(2), and 1910.132(a).

In paragraph (d), OSHA proposes that any and all personal protective equipment which has been used be cleaned and disinfected as necessary before it is reissued to another employee. This requirement is based on existing § 1915.151(a)(3).

In paragraph (e), OSHA proposes that employees be trained in the proper use of personal protective equipment. This paragraph is based on existing § 1915.152(a)(4).

Section 1915.153 Eye and face protection.

In paragraph (a)(1), OSHA proposes to require that eye and face protective equipment be used by employees when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, chemical gases or vapors, or injurious light radiation. This is based on the requirements contained in existing § 1915.151 (b)(1) and (c)(1).

In paragraph (a)(2), OSHA proposes that eye and face protective equipment fit employees properly. This requirement is based on existing § 1910.133(a)(2) (ii) and (iii), and is proposed to assure good vision and proper protection.

In paragraph (a)(3), OSHA proposes, as a new requirement, that workers who pass from well-lit to dimly-lit areas not wear protectors with tinted or variable tinted lenses. This paragraph would prevent workers from being exposed to situations in which extreme lighting changes might temporarily impair their vision due to the darkened effect of the tinted lenses, such as when a forklift operator drives a forklift from outdoors into a poorly lit warehouse. OSHA solicits comments regarding the need for and suitability of this proposed requirement, with emphasis on whether or not wearing of tinted lenses in these situations actually does add to the existing vision problem caused by dim lighting.

In paragraph (a)(4), OSHA proposes that employees who wear prescription

lenses be protected by eye protection that incorporates the prescription in its design, or by eye protection that can be worn over prescription lenses without interfering with the prescription lenses such that vision becomes impaired, or when protection is not fully provided because of interference. This requirement is essentially the same as existing § 1915.151(a)(4).

In paragraph (a)(5), OSHA proposes that employees use equipment with filter lenses for protection from injurious light radiation with a shade number appropriate for the work being performed. In addition, Table I-1, *Filter Lenses for Protection Against Radiant Energy*, is provided to list the proper shade numbers for various operations. These provisions are essentially the same as existing § 1915.151(c)(2) and Table I-1 in § 1915.118 of the current standard. OSHA proposes to move both sections to § 1915.153.

In paragraph (b), OSHA proposes that the design of eye and face protection comply with the requirements of American National Standard Practice for Occupational and Educational Eye and Face Protection (ANSI Z87.1-1979) as stated in proposed paragraph (b)(1), or alternatively, in the case of plano (non-prescription) spectacles, that these protectors meet the requirements, of proposed paragraph (b)(2). Paragraph (b)(2) would cover impact protection, optical requirements, flammability resistance, and radiant energy protection. It presents essentially the same protective requirements for spectacles found in the current OSHA standards, the current American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1979 (Reference 5), and the August 1986 and August 1987 drafts of ANSI Z87.1-198x, (References 23 and 29) (which have been developed by the ANSI Z87 Standards Committee, but have not yet been adopted as national consensus standards). However, proposed paragraph (b)(2) does not contain many of the design restrictive provisions, such as a single minimum lens thickness (3 mm) for all spectacle lens materials, which apply in the current OSHA standards, because they have been superseded by technological advances. In the case of the lens thickness requirement, stronger materials are being used for protective lenses which provide sufficient protection at reduced lens thicknesses (down to 2 mm thickness). In addition, frame designs have been developed which provide improved employee protection, but do not conform with the design restrictions

in the current OSHA standards. The current standards, §§ 1915.151(a)(1) and 1910.133(a)(6), reference ANSI Z2.1-1959 (a very early version of ANSI Z87.1) and ANSI Z87.1-1968. OSHA has determined that those consensus standards are outdated. The proposed criteria in paragraph (b)(2), which are based on the most recent ANSI Standard and on the August 1986 and 1987 draft revisions, are much more performance-oriented than those in the current OSHA standard, and can be met by eye and face protection that is currently in use. In addition, OSHA has determined that the majority of the eye and face protection currently in use in shipyard employment meets either ANSI Z87.1-1979 or the proposed criteria in paragraph (b)(2), and that the level of protection afforded by these provisions is essentially the same. OSHA requests comments on this performance-oriented approach, and on whether or not proposed paragraph (b)(2) contains the provisions necessary to provide proper plano spectacle eye protective equipment for employees.

Section 1915.154 Respiratory protection.

OSHA proposes to substitute the requirements of § 1910.134, Respiratory protection, for the requirements of the current § 1915.152 because the Agency has determined that the Part 1910 respiratory protection provisions are more comprehensive and provide better employee protection from respiratory hazards than the Part 1915 provisions. Indeed, the Agency has determined that all of the requirements of existing § 1915.152 are already effectively covered in § 1910.134. Therefore, OSHA believes that the deletion of current § 1915.152 will not reduce the protection of employee safety or health. As noted above, OSHA has proposed to reorganize and retitle Subpart I of Part 1915, so that proposed § 1915.152 presents general PPE requirements and proposed § 1915.154 references the respiratory protection provisions. The lifesaving equipment provisions of the current Part 1915, presently found in § 1915.154, would be relocated to new § 1915.158.

OSHA has long applied § 1910.134 to shipyard employment. Between 1976 and 1984, violations of § 1910.134 respirator provisions accounted for over 85% of all shipyard personal protective equipment citations issued by OSHA. On November 4, 1985, OSHA issued a field instruction, OSHA Instruction, STD .2, which affirmed that § 1910.134 applies to shipyard employment.

The Agency is currently reviewing § 1910.134 in order to determine which provisions need revision, and is

developing a proposed rule which incorporates the necessary changes for all industry sectors in which it applies. The revision of § 1910.134 will involve a complex rulemaking effort. Therefore OSHA has determined that the incorporation of § 1910.134, without change, into 29 CFR Part 1915 would at this time best protect the safety and health of shipyard employees. This proposal would delete the current shipyard provisions on respiratory protection in § 1915.152, and would place a reference to § 1910.134 in new § 1915.154 to indicate the continued coverage of that section. Although the requirements of § 1910.134 are not proposed for revision in this rulemaking, OSHA does request comments on whether the current provisions of § 1915.152 should be deleted as proposed, or whether any of them should be retained in addition to § 1910.134.

Section 1915.155 Head Protection.

In paragraph (a)(1), OSHA proposes that employers require their employees to wear protective helmets when they are working in areas where there is a potential for injury to the head from falling or moving objects. These requirements are essentially the same as current §§ 1915.153(a) and 1910.132(a).

In paragraph (a)(2), OSHA proposes that employers ensure that employees wear protective helmets designed to reduce electrical shock hazard, whenever they are near exposed energized conductors which could be contacted by the protective helmet. This is essentially the same requirement as current §§ 1915.153(b), 1910.132(a), and 1910.135.

In paragraph (b), OSHA proposes that the design of protective helmets comply with the provisions of American National Standard Requirements for Protective Headwear for Industrial Workers (ANSI Z89.1-1986) (Reference 4) or be of a design that provides equivalent protection. The provisions in ANSI Z89.1-1986 would cover impact resistance, penetration protection, flammability, water absorption resistance, electrical insulation and maximum weight. The current OSHA standards for head protection, §§ 1915.153(b) and 1910.135, reference earlier editions of ANSI Z89.1, ANSI Z2.1-1959 (Reference 15) and ANSI Z89.1-1969 (Reference 17). These earlier editions, except insofar as they address electrical insulation for Class B helmets, specify essentially the same requirements which are in proposed paragraph (b). One significant difference between the helmet provisions in proposed paragraph (b) (which

references the latest ANSI standard for head protection (ANSI Z89.1-1986)), and the present OSHA requirements, involves the relevant testing for helmets used for protection against live electrical conductors. The testing requirements in the 1986 ANSI standard are somewhat more stringent for "Class B" helmets than those contained in the current OSHA standards. However, OSHA believes that helmets currently used for protection against electrical contact in shipyards meet the electrical insulation requirements in ANSI Z89.1-1986. This involves a relatively small number of employees, primarily linemen, who generally wear helmets which are classified under the ANSI standard as "Class B" helmets. The Agency solicits comments and information on helmets presently used for electrical protection in shipyards, and whether such helmets would comply with the proposed OSHA standards.

Section 1915.156 Foot protection.

In paragraph (a), OSHA proposes that employers require their employees to wear protective footwear when they are working in areas where falling and rolling objects create risk of foot injuries. In substance, the same requirement is contained in § 1910.132(a). This proposed language would, however, make a change from § 1915.153(d) of the current shipyard standards which merely requires that employers make safety shoes *available* and *encourage* their use. OSHA believes that requiring employees to wear protective shoes, in certain circumstances, is a necessary precaution to protect workers' feet. In order to gain a fuller understanding of the issue, OSHA requests comments regarding the extent to which shipyard employees already wear safety shoes when they are exposed to foot hazards, and solicits data and comments on the need for the proposed requirement.

In paragraph (b), OSHA proposes that the design of protective footwear comply with the provisions of American National Standard Personal Protection-Protective Footwear (ANSI Z41-1983) (Reference 3) or be of a design that provides equivalent protection. The provisions in ANSI Z41-1983 would cover compression resistance and impact resistance. Section 1910.136 currently references ANSI Z41-1967, which contains the same compression and impact requirements as ANSI Z41-1983. However, the 1967 ANSI standard applies only to men's protective footwear. ANSI Z41-1983 covers both men's and women's protective footwear

thus filling a serious gap in the current OSHA standards for foot protection. Protective footwear which complies with the ANSI Z41-1967 standard would also comply with the proposed requirements in paragraph (b).

As stated above, the requirement that employers ensure that employees use the necessary protective footwear would be added through this rulemaking. Therefore, OSHA has determined that delaying the effective date of this new provision for 90 days would be appropriate so that employers would have time to ensure that their workers are using foot protection when they are exposed to foot hazards. The Agency invites comments, with supporting data, regarding the need for a delayed effective date for this provision.

Section 1915.157 Hand and body protection.

In paragraph (a)(1), OSHA proposes that employees wear gloves and other protective clothing when they are exposed to hazards of heat, chemical burns or sharp objects. This requirement is essentially the same as §§ 1915.153(f) and 1910.132(a) of the current standards, and covers the safety hazards of cuts and chemical burns. The health hazards of toxic chemicals and the required protective clothing are covered in Part 1910, Subpart Z, which applies to shipyards.

In paragraph (a)(2), OSHA proposes that employees not wear greasy clothing when performing hot work. This provision is similar to current § 1915.153(e). It is intended to minimize the risk that the grease will catch fire and burn rapidly, especially where the workplace atmosphere is oxygen enriched.

In paragraph (a)(3), OSHA proposes that electrical insulating gloves and sleeves be available to and used by employees who are exposed to electrical shock hazards while performing electrical work. This requirement is based on current § 1910.132(a).

Section 1915.158 Lifesaving equipment.

This section contains the requirements for lifesaving equipment, such as life jackets, life rings, ladders and rescue lines. These requirements are essentially the same as those found in current § 1915.154, which specify that the U.S. Coast Guard requirements for this equipment be followed.

Section 1915.159 Personal fall protection equipment.

This section presents the proposed requirements for personal fall protection equipment. The proposal covers personal fall arrest systems such as

lifelines, lanyards, body belts and body harnesses, and positioning device systems such as window cleaner's belts and straps. OSHA has proposed these criteria because it intends to recognize the use of personal fall protection equipment as an acceptable alternative to the use of guardrails, when the use of guardrails is not feasible. The provisions for personal fall protection equipment in proposed § 1915.159 are, for the most part, based on a National Bureau of Standards report, "A Study of Personal Fall-Safety Equipment" (NBSIR 76-1146) (Reference 10) and the American National Standard Requirements for Safety Belts, Harnesses, Lanyards, Lifelines and Drop Lines for Construction and Industrial Use, ANSI A10.14-1975 (Reference 1).

OSHA is currently developing a proposed rule to establish strength and other criteria for personal fall protection equipment in Subpart I of the General Industry Standards, (Part 1910). In addition, on January 22, 1985 and November 25, 1986, OSHA issued Notices of Proposed Rulemaking, respectively, for Powered Platforms in General Industry [50 FR 2890] (Reference 22), and Fall Protection in the Construction Industry [51 FR 42718] (Reference 28), which both contained proposed criteria for personal fall arrest systems. The proposed criteria for Part 1915 parallel those in the powered platform and construction fall protection proposals. In that regard, OSHA notes that numerous comments and much of the hearing testimony in the powered platform rulemaking (Docket No. S-700A) involved suggested changes in the proposed provisions for personal fall arrest systems (References 18, 20, 21, and 22). OSHA invites comments on whether any such changes made in the proposed provisions for powered platforms should also be made in the parallel provisions of proposed § 1915.159. Issues relating to personal fall arrest systems are raised at the end of this section of the preamble.

In paragraph (a), OSHA proposes performance criteria and requirements for the use of personal fall arrest systems. This type of equipment is partially covered by current § 1915.154(b). However, the current standard does not provide performance criteria for the proper functioning of the systems.

In paragraph (a)(1), OSHA is proposing that personal fall arrest equipment be used only for employee protection. This would prevent the deterioration caused by improper uses and types of loads.

In paragraph (a)(2), OSHA proposes that personal fall arrest systems and

their components which have been subjected to impact loading be removed from service, and that they not be used again until the equipment has been inspected and determined, by a capable person, as defined in § 1915.151(c), to be undamaged and suitable for reuse. Impact loading weakens the fall arrest system, greatly reducing its energy absorbing characteristics. Thus, if a system were used a second time, without inspection, higher forces could be transmitted to the employee and the system. This might result in injury to the employee. This requirement is based on paragraph 3.3.8 of ANSI A10.14-1975 (Reference 1).

In paragraph (a)(3), OSHA proposes that lifeline and lanyards be protected against being cut, abraded, burnt, or corroded by chemicals. This is essentially the same requirement as paragraph § 1915.154(b)(3) of the current standard.

In paragraph (a)(4)(i), OSHA would require that a fall arrest system be installed to minimize free fall distance so that an employee could neither free fall more than six feet (1.8 m) nor contact any lower level or obstruction. This provision is based on paragraph 5.3 of ANSI A10.14-1975 (Reference 1), and is included because the proposed system strength and deceleration criteria are based on this maximum free fall distance, and because a fall arrest system will not protect falling employees from injury if the system, as installed, allows them to hit a lower level.

In paragraphs (a)(4)(ii)-(iv), which are discussed in more detail below, OSHA proposes new performance requirements for personal fall protection equipment. The current shipyard standards do not provide any performance criteria for such equipment. In order to allow employers a reasonable amount of time to ensure that employees are using equipment which meets these new requirements, OSHA proposes to delay the effective date for these new requirements until 180 days after publication of the Final Rule in the Federal Register. OSHA solicits comments on the utility and need for this delayed effective date.

In paragraph (a)(4)(ii), OSHA proposes that a personal fall arrest system bring an employee to a complete stop within a deceleration distance of 42 inches (1.1 m), excluding lifeline elongation. This distance is in addition to the maximum six-foot (1.83 m) distance of free fall and is based on a requirement contained in the British and Canadian standards (References 6 and 7) for rope grab devices and self-

retracting lifelines—two types of personal fall arrest systems not yet specifically covered by any ANSI or OSHA standards. OSHA requests comments as to the appropriateness of applying this 42-inch (1.1 m) distance limitation to all personal fall arrest systems used in the U.S., and the availability of systems which currently meet this proposed requirement.

In paragraph (a)(4)(iii), OSHA proposes that a personal fall arrest system, under fall conditions, not produce an arresting force of greater than 10 times the employee's weight, or 1,800 pounds (8 kN), whichever is lower. This requirement is based on paragraph 3.3.5 of ANSI A10.14-1975 (Reference 1), and a review by OSHA of pertinent literature on human tolerance when using various restraint systems (References 8, 9, 10, 11 and 12). (See also Issues 1 and 2 below.)

In paragraph (a)(4)(iv), OSHA proposes that the strength (or safety) factor for a personal fall arrest system be at least two. This means that the system would not fail even if subjected to twice the design shock load. This safety factor is derived from the strength criteria contained in the ANSI A10.14 standard, using the maximum permitted arrest force of 10 times gravity, and a design weight of 250 pounds (113 kg). In normal usage, personal fall arrest systems will experience arresting forces well below the design shock load because the free fall distance will usually be less than six feet (1.8 m), and because the lifeline generally used will absorb energy. Therefore, OSHA anticipates that the proposed margin of safety would be several times the actual arresting force. (See also Issues 2.d. and 5 below.)

Appendix A contains examples of test methods for evaluating personal fall arrest systems. OSHA recognizes that test methods not listed in Appendix A would also, if properly implemented, enable employers to determine whether or not their equipment satisfies the criteria of proposed § 1915.159. These examples are provided solely to assist those employers who are not aware of proper test methods for their equipment. The procedures listed in Appendix A are essentially the same as those contained in the Notices of Proposed Rulemaking for Powered Platforms in General Industry (50 FR 2890), and Fall Protection in the Construction Industry (51 FR 42718).

In paragraph (a)(5), OSHA proposes criteria for attachment point locations on body belts and body harnesses. Three locations are specified, as follows: On or behind the hips; above the waist in the back; or above the head.

These criteria reflect OSHA's awareness that the human body is more susceptible to injury when deceleration forces are applied to the front of the body belt or harness. Also, the proposed deceleration force limits of paragraph (a)(4) are based on forces being applied to one of the three locations specified in this paragraph. These three acceptable locations are discussed in NBSIR 76-1146 (Reference 10).

In paragraph (a)(6), OSHA proposes that body belts measure at least one and five-eighths inches (4.1 cm) in width, in order to distribute adequately the arresting force over the worker's body. The proposed requirement is based on paragraph 3.2.1 of ANSI A10.14-1975 (Reference 1), which calls for a belt which has a nominal width of one and three quarter inches (4.4 cm). OSHA believes that one-eighth-inch is a reasonable tolerance to apply to this requirement, since some tolerance is necessary in the manufacture of belt webbing.

In paragraphs (a)(7) and (a)(8), OSHA is proposing that hardware used in personal fall arrest systems be made of drop forged, pressed, formed steel, or materials of equivalent strength, and that it be protected from corrosion. In addition, the surfaces and edges of the hardware must be smooth. These requirements would ensure that the hardware retains the necessary strength characteristics for the life of the fall arrest system and under expected use conditions, and that its surfaces and edges do not cause damage to the attached belt or lanyard.

In paragraph (a)(9), OSHA proposes that each employee be provided with a separate lifeline whenever vertical lifelines are used. OSHA recognizes that using a single vertical lifeline to tie off two or more employees performing separate tasks is inherently unsafe. Movement by one employee could pull the lifeline to one side. This could, in turn, cause the other employee(s) to lose balance. In addition, if one employee did fall, movement of the lifeline during the arrest of the fall would very likely cause any other employee(s) connected to the lifeline to fall.

Paragraph (a)(10) would require personal fall arrest systems to be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall. This proposed provision is performance-oriented and addresses the actual forces that the activation of a specific fall arrest system would produce. For example, if a system produces an arresting force of 1,500 pounds (6.7 kN) during testing, the anchorage must support 3,000 pounds (13.4 kN). This

allows employers flexibility in selecting and designing anchorage systems, while still requiring them to provide adequate strength. The proposed provision is based on information received in response to the Powered Platform proposal (50 FR 2890), mentioned earlier (Reference 18). OSHA invites suggestions regarding means by which OSHA compliance personnel can evaluate compliance with this paragraph.

Paragraphs (a)(11), (a)(12), (a)(13), and (a)(14) provide the strength criteria for lanyards, snap hooks, dee-rings and lifelines. Under those criteria, the components must be able to sustain a minimum load of 5,000 pounds (22.2 kN). This strength requirement is based on the force limit of 10 times gravity acting on a 250 pound (113.4 kg) employee, multiplied by a safety factor (strength factor) of two. Paragraph (a)(11) contains similar strength criteria for vertical lifelines, but requires that self-retracting lifelines and lanyards (which automatically limit free fall distance to two feet (0.61 m)) be able to sustain a minimum load of only 3,000 pounds (13.3 kN). The strength requirement for the cable or webbing used in self-retracting lifelines and lanyards is lower than that for other components, because the more restrictive limit on free fall distance limits the forces to which a falling employee would be exposed.

In paragraphs (a)(15) and (a)(16) OSHA proposes that snap-hooks not be connected to loops in webbing lanyards or to each other. This would prohibit two methods of attachment which are considered unsafe because snap-hooks could accidentally disengage during use. These provisions are based on paragraphs 3.2.5 and 3.2.3.2 of ANSI A10.14-1975 (Reference 1), respectively.

In paragraph (a)(17), OSHA proposes that no more than one snap-hook be connected to any single dee-ring. OSHA considers multiple connections to be unsafe because one snap-hook could cause another to become accidentally disengaged from the dee-ring during use.

Proposed paragraph (a)(18) contains the provisions which apply to the inspection of personal fall arrest systems. In this paragraph, OSHA proposes that the employer visually inspect the fall arrest system for defects or damage prior to each use, and that the employer remove defective or damaged equipment from service if the strength properties may have been weakened. This inspection need not involve testing or impact loading of the system.

In paragraph (a)(19), OSHA would require that employers train employees

who use these systems so that they know the application limits of the system; the proper hook-up, anchoring, and tie-off techniques; methods of use; and proper methods for inspection and storage. OSHA believes that employees must be thoroughly trained in all aspects of the system, in order for it to provide the necessary protection.

In proposed paragraph § 1915.159(b), OSHA presents criteria for positioning device systems.

In paragraph (b)(1), OSHA would require that all hardware have a corrosion-resistant finish and that all surfaces and edges be smooth so that they do not cause damage to the attached belt or connecting assembly. This requirement is based on similar requirements in ANSI A10.14-1975 (Reference 1).

In paragraphs (b)(2) and (b)(3), OSHA proposes that connecting assemblies, such as snap-hooks and dee-rings, be able to sustain a load of at least 5,000 pounds (22.2 kN), and that positioning device anchorages be capable of supporting twice the potential impact load of an employee's fall. These requirements are based on paragraphs 3.1.4 and 3.2.7 of ANSI A10.14-1975 (Reference 1).

Paragraph (b)(4) contains the proposed strength requirement for restraint lines, specifying that they must have a minimum breaking strength of 3,000 pounds (13.3 kN). The NBS report mentioned above (NBSIR 76-1146) (Reference 10) recommends a breaking strength in excess of 2,000 pounds (8.9 kN) for new lines. OSHA believes that requiring a breaking strength of 3,000 pounds (13.3 kN) is necessary to ensure that employees are adequately protected from fall hazards and is reasonable in view of the strengths and sizes of rope which are commercially available and the wear and tear expected during use.

Proposed paragraph (b)(5) provides the system performance criteria for the different types of positioning device systems. These are new performance requirements that are not in the current shipyard standards. In order to allow employers a reasonable amount of time to ensure that employees are using equipment which meets the new requirements, OSHA proposes to delay the effective date for these new requirements (paragraphs (b)(5)(i) and (b)(5)(ii)) until 180 days after publication of the Final rule in the *Federal Register*. OSHA solicits comments on the utility and need for this delayed effective date.

In paragraph (b)(5)(i), OSHA would require that a window cleaner's positioning system be able to withstand, without failure, a drop test consisting of a six foot (1.8 m) drop of a 200 pound

(113 kg) weight. In addition, the system would limit the initial arresting force to not more than 2,000 pounds (8.89 kN) for a duration not to exceed two milliseconds. Subsequent arresting forces produced due to "bouncing" during arrest of the fall are not to exceed 1,000 pounds (4.45 kN). A test method to evaluate this requirement is contained in appendix A. These criteria, which are essentially the same as those presented in American National Standard Safety Requirements for Window Cleaning, ANSI A39.1-1969 (Reference 2), are more stringent than the arresting force criteria for other positioning devices. This is because a window cleaner's system allows for free falls of up to six feet (1.8 m), whereas the other systems limit free fall to a lesser distance.

In paragraph (b)(5)(ii), OSHA proposes that all other positioning device systems be capable of withstanding, without failure, a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight. This is essentially the same requirement for lineman's body belt systems as is contained in the OSHA General Industry telecommunications standards, § 1910.268(g)(iii)(G).

In addition, while OSHA does not require that employers themselves test positioning device or personal fall arrest systems, OSHA proposes that positioning device systems be considered to comply with the provisions of (b)(5)(i) and (ii), above, if they have been tested in accordance with the positioning device guidelines in appendix A. OSHA solicits suggestions regarding the means by which OSHA compliance personnel can determine compliance with this paragraph.

In paragraph (b)(6)(i), OSHA proposed that snap-hooks not be connected to each other. This would prohibit a method of attaching snap-hooks which OSHA considers to be unsafe because snap-hooks could accidentally disengage during use. This provision is based on paragraph 3.2.3.2 of ANSI A10.14-1975 (Reference 1).

In paragraph (b)(6)(ii), OSHA proposes that positioning device systems and their components which have been subjected to impact loading be removed from service. Employers would not be permitted to use the equipment again until the system had been inspected and determined by a capable person to be undamaged and suitable for reuse. Impact loading weakens the positioning device system, and greatly reduces the energy absorbing characteristics of the system—particularly in the case of window cleaner's systems. Thus, if the system were to be used a second time,

without inspection, higher forces could be transmitted to the employee and the system. This might result in injury to the employee. This requirement is based on paragraph 3.3.8 of ANSI A10.14-1975 (Reference 1).

In paragraph (b)(6)(iii), OSHA would require that employers train employees who use these systems so that they know the application limits of the system; the proper hook-up, anchoring, and tie-off techniques; methods of use; and proper methods for inspection and storage. OSHA believes that employees must be thoroughly trained in all aspects of the positioning device system in order for it to provide the necessary protection.

Proposed paragraph (b)(7) contains the provisions applicable to inspections of positioning device systems. In this paragraph, OSHA proposes that the positioning device system be visually inspected for defects or damage prior to each use, and that defective or damaged equipment be removed from service if its strength properties might have been weakened. This inspection need not involve testing nor impact loading of the system.

Appendix A

As discussed above, an appendix accompanies this proposal. This appendix (Appendix A) would be non-mandatory, containing test methods and other information to assist employers in complying with the criteria for personal fall arrest systems contained in this standard. OSHA requests comments on what other provisions should be added to or substituted for the provisions in proposed Appendix A, in order to ensure that employees receive the necessary protection and appropriate guidance relative to personal fall protection systems.

Issues Relating to Personal Fall Arrest Systems

OSHA solicits information and data on a number of issues pertinent to its coverage of personal fall arrest systems in § 1915.159(a).

1. *Body belts.* OSHA proposes to allow the use of body belts (safety belts) for up to a six-foot (1.8 m) free fall distance, and a force limit of 10 g_a or 1,800 pounds (8 kN). This is consistent with ANSI A10.14-1975 (Reference 1) and NBSIR 76-1146 (Reference 10). However, the view has also been expressed that the use of body belts in fall arrest systems should be further restricted or even prohibited. For example, the draft International Safety Organization (ISO) international standard for personal fall arresting

systems limits the arresting force to 5 kN (1,125 pounds) when using a body belt. The draft ISO standard also prohibits the use of a system which would suspend a worker more than 50 degrees from a vertical position after a fall is arrested. OSHA believes that the ISO requirements would effectively eliminate the use of currently available body belts in fall arrest systems.

The report of a study conducted by Dr. Maurice Amphoux et al., *Safety Equipment in Construction and Public Works Transportation* (Reference 19), recommends that workers not use body belts for fall arrest because of injury potential. It should also be noted that the British Standard Institution's *Specification for Industrial Safety Belts, Harnesses and Safety Lanyards* (1979) (Reference 13) limits the use of body belts to a work situation where there is a maximum free fall of two feet (.6 m) and a maximum force of five g_n . In addition, a recent review by the U.S. Air Force Aerospace Medical Research Laboratory of pertinent literature on personal fall arrest systems, *Fall Arrest and Post-Fall Suspension: Literature Review and Directions for Further Research* (AFAMRL-TR-84-021) (Reference 14), concludes that a body belt is not safe for prolonged suspension (especially motionless suspension).

In addition, comments and public hearing testimony received regarding the OSHA Powered Platform proposed rulemaking have asserted that employees wearing body belts have been injured by the belts during fall arrest. Accordingly, those commenters and witnesses have suggested that OSHA limit or ban the use of the body belt in personal fall arrest systems (Reference 20 and 21).

In view of this information, OSHA requests that interested parties provide information and views, together with supporting data, regarding the use of body belts in a fall arrest system. Specifically, OSHA solicits responses to the following questions:

a. To what extent should OSHA allow the use of body belts (safety belts) in personal fall arrest systems? If permitted, what limitations should be imposed?

b. Is the proposed six-foot (1.8 m) limit on free fall acceptable for employees who wear body belts? Should some other limitations, such as two feet (.6 m), be adopted for body belts instead? What data are available to support the adoption of an alternative limitation?

c. Is the proposed 10 g_n or 1,800 pound (8 kN) force limitation for body belts acceptable? Is it acceptable for body harnesses? What would be the advantages or disadvantages of

implementing a 10 g_n force limitation? What force limitation would most effectively protect workers within the bounds of feasibility?

d. Is there additional information available which indicates that prolonged suspension in a body belt may cause injury to employees?

e. Is there injury data which indicates that employees have been injured by their body belts during fall arrest, or during suspension following fall arrest?

f. If body belts are not allowed in personal fall arrest systems, or if their use is limited so that body harnesses are more widely used, what cost impacts would be attributable to the increased use of body harnesses? What is the availability and worker acceptance of body harnesses in the shipyard industry?

2. *Arresting force limits.* OSHA requests comments concerning the best method for stating the maximum arrest limitation. By using only the force generated by a 10 g_n deceleration as the limitation, the permitted force value would vary with the weight of the worker. For instance, based on a 10 g_n limitation alone, a 275 pound (125 kg) worker would be permitted by the standard to experience 2,750 pounds (12.3 kN) of force during an arrest. In view of the human tolerance information discussed above, OSHA believes that this amount of force is unacceptable, and has proposed 1,800 pounds (8 kN) as the maximum force. OSHA requests comments on the following:

a. Does the proposal provide a reasonable means by which deceleration and force would be taken into account? Should the limitation be expressed solely as either maximum arrest force (pounds force), or the force generated by a maximum arrest deceleration (i.e., g_n)?

b. Would the proposed 1,800 pound (8 kN) limitation for body belts and body harnesses provide the necessary protection for employees? If not, what should the limit be? What information is available to support setting a different limitation for arresting force?

c. The suggested test procedures in Appendix A include a 130 pound (59 kg) test weight for lanyard systems. NBSIR 76-1146 (Reference 10) identified lighter test weights as being more useful than heavier test weights in determining compliance with the 10 g_n limitation for lanyards, because lighter test weights do not cause lanyards to be as elastic as do heavier weights and therefore stop more abruptly. Thus, it is more difficult to satisfy the 10 g_n limit with a 130 pound (59 kg) test weight than with a 220 pound (100 kg) test weight. However, if the standard were to impose *only* a

force limitation on fall arrest systems, without a limitation on arrest force (in pounds), the use of a 130 pound (59 kg) test weight would not reflect the forces to which employees over 130 pounds (59 kg) would be exposed during a fall (see introductory discussion for this issue, above). OSHA requests data, views, and arguments on whether the 130 pound (59 kg) test weight for lanyard systems is appropriate, or whether the 220 pound (100 kg) test weight, which is used for all other systems, should also be used for lanyards during the force test.

d. Comments and public hearing testimony received regarding the personal fall arrest system provisions of the powered platform proposal asserted that the proposed test procedures were confusing and overly complicated. They recommended simplified test procedures (References 20 and 21). Are the proposed test procedures in Appendix A too complex? If the strengths of all personal fall arrest system components are specified, would a single qualification test to measure arresting force be sufficient? What should be the parameters of a single test (such as free fall distance, test weight, and arresting force limit)?

3. *Snap-hook design.* OSHA has received a number of conflicting views on snap-hook design. During meetings with the Fall Protection Group of the Industrial Safety Equipment Association (ISEA), several members of that group suggested that OSHA prohibit the use of single action snap-hooks and require, instead, the use of locking snap-hooks. Other group members asserted that properly designed and applied single action snap-hooks provide adequate protection, so OSHA should permit their continued use. In addition, comments and public hearing testimony received regarding the personal fall arrest system provisions of the powered platform proposal recommended the use of locking snap hooks (References 20 and 21). OSHA requests suggestions, with supporting information, regarding the type of snap-hook whose use should be permitted. In addition, OSHA requests information on:

a. The number of snap-hooks (distinguishing between single action and locking) currently in use;

b. The increased cost which would be imposed if OSHA required the use of locking snap-hooks and prohibited the use of single action snap-hooks; and

c. Incidents in which either single action or locking snap-hooks have failed in use.

d. The types of connections which locking snap-hooks may be used where such connections would be considered

unadvisable using a single action snap-hook.

4. *Inspections.* OSHA requests comments regarding whether or not the Agency should provide more definitive inspection criteria for determining when personal fall protection systems are no longer suitable for use. Are there examples of such criteria which could be included in the standard or appendix? If there are, please submit these along with comments and supporting data.

5. *Testing.* OSHA requests comments regarding the testing of personal fall protection systems. Are manufacturers of this equipment presently testing and evaluating their products? If so, how do these tests compare with those proposed in this rulemaking? Are products currently labeled as having satisfied test criteria? What information do employers have regarding tests for existing personal fall protection equipment. Can the proposed test methods be simplified without compromising their value? If so, how? (See Issue 2. d.) Should employer testing of personal fall protection systems be mandatory? Are there any testing methods which can be used to determine whether or not system components can be interchanged with those from other systems?

6. *Issues raised by comments received in the powered platform rulemaking.* Appendix D of OSHA's proposed rulemaking for powered platforms (Reference 22) is essentially the same as proposed § 1915.159(a) and Appendix A of this proposal. OSHA has received comments on Appendix D of the powered platforms proposal which raise issues pertinent to this proposal (References 18, 20, 21 and 22). OSHA solicits comments from interested parties on these and other points of concern.

a. A commenter on powered platforms Appendix D (Reference 21) has criticized the test methods section as inadequate, and has suggested that equipment testing be required. The commenter further suggested that OSHA require employers to test components and subassemblies of systems, and not require that employers test complete systems. OSHA requests comments and suggestions regarding the need for clarified, mandatory test methods for components and subassemblies of personal fall arrest systems. OSHA would be particularly interested in any information about consensus standards for the design and testing of components and subassemblies.

b. The same commenter (Reference 21), has criticized the mandatory provisions for failing to spell out what equipment can be combined to form an

acceptable system; how it can be connected; and the circumstances in which the components and subsystems of a personal fall arrest system would be interchangeable. It has, for example, been suggested the OSHA require that personal fall arrest equipment be labeled to indicate when and where employers could use it interchangeably. Would a labeling requirement addressing interchangeability be feasible? What information should be placed on the label and who should be responsible for labeling the equipment? If any employer or manufacturer is currently using such a labeling system, please submit this information and sample labels.

c. OSHA has presented definitions for key words in proposed paragraph (c) of § 1915.151. A commenter on powered platforms (Reference 21) has criticized the definitions as incomplete and imprecise. OSHA solicits comments and suggestions regarding the adequacy of the proposed definitions, with special attention directed to the terms discussed below.

(i) The term "body support" has been suggested to replace "body belt." It was further recommended that the term incorporate both body belts and "full body harnesses" (body harnesses), in order to describe more fully the equipment which would be appropriate for fall arrest or suspension. OSHA solicits comments and information regarding the appropriateness of the recommended change, given that body belts would be permitted by the standard (see Issue, 1, above).

(ii) OSHA has used the term "deceleration device" to describe certain fall arrest components. It has been suggested that "deceleration device" is not properly descriptive, and that OSHA should instead utilize the terms "fall arrester," "energy absorber" and "self-retracting lifeline/lanyard" (different types of deceleration devices) to cover the separate components and subsystems involved. OSHA solicits comments as to how adequately the term "deceleration device" encompasses the components and subsystems which are used to control deceleration. OSHA also requests comments regarding the suggestion that "deceleration device" be replaced by more specific terms. Supporting information should accompany comments, with emphasis on the feasibility and utility of proposed definitions and other changes.

(iii) OSHA has used the term "fixed anchorage" in Appendix D to powered platforms to describe an attachment point for personal fall arrest equipment. It has been suggested that OSHA revise the definition to specify that the

"anchorage" is independent of the personal fall arrest system. It was further suggested that OSHA require anchorages to have a minimum strength of 3,600 pounds when the maximum arresting force is 1,800 pounds or less in order to provide adequate protection for workers in worst case situations. OSHA solicits comments and information regarding the need for and feasibility of the suggested revisions.

d. A commenter (Reference 21) on the powered platform proposal has suggested that OSHA quantify the corrosion resistance requirements, referring to the ASTM Salt Spray Testing Standard. OSHA solicits comments and suggestions regarding the utility and feasibility of such quantification. Suggestions should be accompanied by supporting information.

e. It has been suggested (Reference 21) that self-retracting lifelines and lanyards be required to meet the minimum loaded requirement (3,000 pounds) with the lanyard or lifeline fully extended. It was also suggested that OSHA specify the maximum arresting force to be transmitted by those devices, taking into account the kind of "body belt or harness" used. OSHA solicits comments, accompanied by supporting information, regarding the proposed requirements for self-retracting lifelines and lanyards.

f. It has been suggested (Reference 21) that OSHA require proof-testing of deerings and snap-hooks at 100 percent of rated load to ensure that defective equipment is not used. OSHA solicits comments regarding the need for such testing and suggestions for its implementation. OSHA would be particularly interested in information concerning the cost of testing, what testing is currently performed or feasible, and any accidents involving equipment defects.

g. It has been suggested (Reference 21) that OSHA require horizontal lifeline subsystems to be designed by "qualified persons" and that the requirements for horizontal lifelines be revised to include more detailed guidance. OSHA solicits comments regarding these recommendations. Please submit supporting information.

h. The same powered platform commenter (Reference 21) has suggested that employers inspect personal fall arrest systems and their components for both function and deterioration. OSHA solicits comments regarding the need for, recommended procedures, and feasibility of such inspections. Supporting information should accompany any recommendations. To what extent would inspection for

function approximate testing? How frequently should such inspections take place? What would be the anticipated burden of complying with the suggested revision? OSHA would appreciate comment on the above issues.

Amendments to Other Subparts of the Shipyard Standards

As discussed earlier, this proposal contains proposed revisions to provisions in Subparts C and H of the shipyard standards to correlate references to the proper provisions in proposed Subpart I. This is necessary since, due to the proposed reformatting of Subpart I, the current references would no longer identify the correct paragraphs in proposed Subpart I. These proposed revisions are editorial in nature and would not substantially change the current requirements in these other subparts. These proposed revisions are included as items two through eight in the amendatory section of this proposal.

The references listed below, as well as other information which has been used to prepare and support this proposal, are available for public inspection and copying at the Docket Office at the address given earlier.

III. References

1. American National Standards Institute (ANSI). *American National Standard Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use*. (ANSI A10.14-1975). New York, NY: ANSI, 1975.
2. American National Standards Institute. *American National Standard Safety Requirements for Window Cleaning*. (ANSI A39.1-1969). New York, NY: ANSI, 1969.
3. American National Standards Institute (ANSI). *American National Standard for Personnel Protection-Protective Footwear*. (ANSI Z41-1983). New York, NY: ANSI, 1983.
4. American National Standards Institute (ANSI). *American National Standard Safety Requirements for Protective Headwear for Industrial Workers*. (ANSI Z89.1-1986). New York, NY: ANSI, 1986.
5. American National Standards Institute (ANSI). *American National Standard Practice for Occupational and Educational Eye and Face Protection*. (ANSI Z87.1-1979). New York, NY: ANSI, 1979.
6. British Standards Institution (BSI). *Specification for Self-Locking Safety Anchorages for Industrial Use*. (BS 5062). London, England: BSI, 1973.
7. Canadian Standards Association (CSA). "Fall-Arresting Devices, Personnel Lowering Devices and Life Lines." (CSA Standard Z259.2). Ontario, Canada: CSA, 1979.
8. Wang, Chen H., "Free-Fall Restraint Systems." *Professional Safety*. pp 9-14. February 1977.
9. National Safety Council (NSC). *Safety Belts, Harnesses and Accessories*. American Society of Safety Engineers, (ASSE). Research Report. Chicago, Illinois: NSC, 1947.

10. National Bureau of Standards (NBS). NBSIR 76-1146 *A Study of Personal Fall-Safety Equipment*. Washington, D.C.: NBS, June 1977.
11. Sulowski, Andrew C., "Selecting Fall Arresting Systems." *National Safety News*, October 1979, Pp 55-62, Chicago, Illinois: NSC, 1979.
12. Sulowski, Andrew C., "Assessment of Maximum Arrest Force." *National Safety News*, March 1981, Pp 55-58, Chicago, Illinois: NSC, 1981.
13. British Standards Institution (BSI). *Specification for Industrial Safety Belts, Harnesses and Safety Lanyards*. (BS 1397). London, England: BSI, 1979.
14. Hearon, Bernard F. and Brinkley, James W., *Fall Arrest and Post-Fall Suspension: Literature Review and Directions for Further Research*. (AFAMRL-TR-84-021), Air Force Aerospace Medical Research Laboratory, Wright-Patterson AFB, Dayton, Ohio: 1984.
15. American National Standards Institute (ANSI). *American National Standard Code for Head, Eye and Respiratory Protection*. (ANSI Z22.1-1959). New York, NY: ANSI, 1959.
16. American National Standards Institute (ANSI). *American National Standard for Occupational and Educational Eye and Face Protection*. (ANSI Z87.1-1968). New York, NY: ANSI, 1968.
17. American National Standards Institute (ANSI). *American National Standard Safety Requirements for Industrial Head Protection*. (ANSI Z89.1-1969). New York, NY: ANSI, 1969.
18. Ellis J. Nigel, "Comment on Power Platform Standard." Letter, March 25, 1985, Research and Trading Corporation, Wilmington, Delaware: RTC, 1985.
19. Noel, Georges; Amphoux, M., et al., *Safety Equipment in Construction and Public Works Transportation*. (No. 362) Technical Institute for Construction and Public Works. Montreuil, France: 1978.
20. The United States Department of Labor, Occupational Safety and Health Administration, Public Hearing, Transcripts, Volumes I, II and III, February 19-20, 1986. Executive Court Reporters, Silver Spring, Maryland: 1986.
21. United States Technical Advisory Group, Personal Equipment for Protection Against Falling, ISO/TC 94/SC4. *Comments on 29 CFR Part 1910, "Powered Platforms for Exterior Building Maintenance, Appendix D; Proposed Rule"*. Terry L. Schmidt; Letter, May 31, 1985. Rose Manufacturing Company, Englewood, Colorado: 1985.
22. U.S. Department of Labor, Occupational Safety and Health Administration, Powered Platforms for Exterior Building Maintenance. Proposed Rule, 29, CFR 1910.66 (50 FR 2890, January 22, 1985). *Federal Register*, Washington, DC: 1985.
23. American National Standards Institute (ANSI). *Proposed ANSI Z87.1-198x, Occupational and Educational Eye and Face Protection Standard*, Draft V, New York, NY: ANSI August 1986.
24. Bureau of Labor Statistics (BLS). "Accidents Involving Eye Injuries." Washington, DC: BLS, 1980.
25. Bureau of Labor Statistics (BLS). "Accidents Involving Face Injuries." Washington, DC: BLS, 1980.

26. Bureau of Labor Statistics (BLS). "Accidents Involving Head Injuries." Washington, DC: BLS, 1980.
27. Bureau of Labor Statistics (BLS). "Accidents Involving Foot Injuries." Washington, DC: BLS, 1981.
28. U.S. Department of Labor, Occupational Safety and Health Administration, Safety Standards for Fall Protection in the Construction Industry; Notice of Proposed Rulemaking, 29 CFR 1926 (51 FR 42718, November 25, 1986). *Federal Register*, Washington, DC: 1986.
29. American National Standards Institute (ANSI). *Proposed ANSI Z87.1-198x, Occupational and Educational Eye and Face Protection Standard*, Draft VI, New York, NY: ANSI August 1987.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action. The expected annualized total costs of full compliance would be about \$3.7 million.

Data Sources

The primary source for this assessment is the November 1985 Final Report by CONSAD Research Corporation entitled, "Data to Support A Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA has also used an October 1984 report by Main Hurdman/KMG entitled "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and ship breaking industries would be affected by the proposed consolidation of the personal protective equipment sections of the existing Part 1915, Subpart I and Part 1910, Subpart I because personal protective equipment is used in all shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 400 shipyards operating in 1985, which is 200 fewer than the 600 shipyards active in 1980. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but orders for only 10 merchant vessels (140,915 tons) in 1984. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will probably cause a

further decline in the total number of active shipyards.

Population-at-Risk

OSHA has determined that every shipyard employee uses some of the equipment governed by this proposed consolidation. Hard hats and safety shoes are worn by nearly all production workers. Safety belts and harnesses are occasionally worn by all production workers who work at elevations where guardrails or other structural forms of fall protection are not feasible. It is of particular interest to OSHA that approximately nine percent of the shipyard employees use respirators and work in hazardous atmospheres. The actual number of exposed employees will depend on the overall level of shipyard employment. For example, shipyards employed 177,300 workers in 1980 and about 145,000 workers in 1984. Thus, OSHA has estimated that the number of workers affected by Subpart I will be between 145,000 and 180,000. With respect to respirator use and work in hazardous atmospheres, OSHA has estimated that the population-at-risk would be between 13,000 and 16,200 employees.

Risk of Fatality, Injury, or Illness

OSHA has estimated that the annual number of injuries and illnesses in shipyards due to a lack of respiratory protective equipment was between 390 and 595 between 1981 and 1985. Of these injuries and illnesses, between 190 and 335 were lost workday injuries. As the average number of lost workdays for lost workday injuries due to this type of accident was 7.7 days, OSHA has estimated that the annual number of lost workdays in shipyards due to lack of respiratory protective equipment would be between 1,465 days and 2,580 days.

OSHA has also determined that there would be between three and nine annual fatalities in shipyards associated with a lack of respiratory protective equipment. Finally, there is a potential for long-term chronic respiratory diseases that may lead to a premature death occurring from failure to use respiratory protection. OSHA, however, has been unable to estimate these future risks.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that

would accrue to those workers who are at risk from current practices involving the use of personal protective equipment in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of personal protective equipment requirements into one set would clarify the rules. Thus, the proposed consolidation may lead to an increase in compliance which, in turn, may lead to an increase in employee safety while using personal protective equipment.

Based on the CONSAD report concerning the preventability of these fatalities and injuries, OSHA has estimated that full compliance with the proposed standard would prevent between two and seven out of the estimated three to nine annual fatalities and between 290 and 475 out of the estimated 390 to 595 annual injuries.

The second source is the benefits that should accrue to those workers who will be better protected from long-term chronic illnesses because of the clearer respiratory protection program. OSHA believes that better and more frequent use of respirators within the context of a substantive respiratory protection program can lead to increased long-term health improvements for these employees.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. All comments will be carefully analyzed by OSHA for incorporation into the Regulatory Impact Analysis (RIA) for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD Report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

Based on the CONSAD report, OSHA has determined that there are two general sets of provisions that involve costs of compliance. The first general set of provisions involves the implementation of the § 1910.134 requirements for a comprehensive respiratory protection program. These

provisions involve fit-testing, annual physical examinations, formal training, respirator cleaning and inspecting, and storage specifications. Although these provisions have long been applicable to shipyards, current industry practices do not comply with them all of the time. The second general set of provisions are those affecting procedures for work in hazardous atmospheres. In particular, firms do not always have adequate stand-by personnel, proper rescue equipment at hand, or a positive pressure SCBA on hand. Thus, using the baseline of existing industry practice, OSHA has estimated the annualized costs of compliance with the proposed consolidated standard to be about \$3.7 million. OSHA invites public comment concerning this estimate. All comments will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

An important criterion that governs a regulatory flexibility analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities must be specifically evaluated. That is, OSHA must determine whether the proposal would have a relative greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

The proposed standard, however, has no changes that would require significant capital expenditures. Furthermore, as these proposed provisions are more performance-oriented, small entities can use cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance with the proposed standard primarily depend upon the amount of respirator use which, typically, depends upon the size of the firm. Nevertheless, the percentage of small shipyards that would need to upgrade their respiratory protection programs is greater than that percentage of large shipyards that would need to upgrade their respiratory protection programs. Thus, the costs of

compliance expressed as a percentage of total revenues would be larger for very small firms (fewer than 50 employees) than for very large firms (greater than 1,000 employees). These compliance costs, however, would be a small component of the overall cost of a shipyard's product.

Thus, OSHA has concluded that this proposed standard would not have a significant number of small entities.

The economic impact estimates presented in this preamble will be refined as OSHA receives additional information during this rulemaking.

OSHA solicits comments on the estimates and conclusions presented in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification. Comments received will be addressed and incorporated into the Regulatory Impact Assessment (RIA) for the final rule.

OSHA's Preliminary Regulatory Impact Assessment and Regulatory Flexibility Assessment are available for inspection and copying at the OSHA Technical Data Center, Room N-3670, 200 Constitution Avenue NW., Washington, DC 20210.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (40 CFR Parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions and additions to 29 CFR Part 1915, Subpart I—Personal Protective Equipment, focus on the reduction of accidents or injuries by means of personal protective equipment, work practices and procedures, proper use and handling of equipment, and training. The proposal also contains language, definition, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to Subpart B, Section 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are requested to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S-045, U.S. Department of Labor, Room N-2634, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11 interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989;

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken or about which the hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 states and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standards within six months of the publication date of a final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont, and Washington) with their own state plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA states and in the following state plan states and territories: Alaska, Arizona, Connecticut,¹ Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,¹ North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All states with state plans must also extend coverage to state and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Body belts, body harnesses, Safety belts, Fall protection systems, Eye protection, Safety glasses, Face protection, Foot protection, footwear, safety shoes, Head protection, hard hats, Incorporation by reference, Occupational safety and health, Marine safety, Protective equipment, Personal flotation devices, life jackets, Respirators, respiratory protection, Safety, ship repair, shipyards, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915, as set forth below.

¹ Plan covers only state and local government employees.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. Section 1915.32 would be amended by revising paragraph (a)(3) to read as follows:

§ 1915.32 Toxic cleaning solvents.

(a) * * *

(3) Employees shall be protected against toxic vapors by suitable respiratory protective equipment in accordance with the requirements of Subpart I of this part and, where necessary, against exposure of skin and eyes to contact with toxic solvents and their vapors by suitable clothing and equipment.

3. Section 1915.33 would be amended by revising paragraph (a) to read as follows:

§ 1915.33 Chemical paint and preservative removers.

(a) Employees shall be protected against skin contact during the handling and application of chemical paint and preservative removers and shall be protected against eye injury by goggles or face shields in accordance with the requirements of Subpart I of this part.

4. Section 1915.34 would be amended by revising paragraphs (a)(1), (a)(4), (b)(1), (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) to read as follows:

§ 1915.34 Mechanical paint removers.

(a) * * *

(1) Employees engaged in the removal of paints, preservatives, rusts or other coatings by means of power tools shall be protected against eye injury by goggles or face shields in accordance with the requirements of Subpart I of this part.

(4) In a confined space, mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum shall be used, or employees shall be protected by respiratory protective equipment in accordance with the requirements of Subpart I.

(b) * * *

(1) Hardened preservative coatings shall not be removed by flame in enclosed spaces unless the employees exposed to fumes are protected by air line respirators in accordance with the requirements of Subpart I of this part. Employees performing such an operation in the open air, and those exposed to the resulting fumes, shall be protected by a fume filter type respirator in accordance with requirements of Subpart I of this part.

(c) * * *

(3) * * *

(i) Abrasive blasters working in enclosed spaces shall be protected by hoods and air fed respirators or by air helmets of a positive pressure type in accordance with the requirements of Subpart I of this part.

(ii) Abrasive blasters working in the open shall be protected as indicated in paragraph (c)(3)(i) of this section except that when synthetic abrasives containing less than one percent free silica are used jointly, filter type respirators approved jointly by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration for exposure to lead dusts, used in conjunction with proper eye, face and head protection, may be used in accordance with Subpart I of this part.

(iii) Employees, other than blasters, including machine tenders and abrasive recovery men, working in areas where unsafe concentrations of abrasive materials and dusts are present shall be protected by eye and respiratory protective equipment in accordance with the requirements of Subpart I of this part.

5. Section 1915.35 would be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2), (b)(13), and (b)(14) to read as follows:

§ 1915.35 Painting.

(a) * * *

(1) * * *

(i) In confined spaces, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of Subpart I of this part.

(ii) In tanks or compartments, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of Subpart I of this part. Where mechanical ventilation is provided, employees shall be protected by respirators in accordance with the requirements of Subpart I of this part.

(iii) In large and well ventilated areas, employees exposed to such spraying

shall be protected by respirators in accordance with the requirements of Subpart I of this part.

(2) Where brush application of paints with toxic solvents is done in confined spaces, or other areas where lack of ventilation creates a hazard, employees shall be protected by filter respirators in accordance with the requirements of Subpart I of this part.

(b) * * *

(13) All employees continuously in a compartment in which such painting is being performed, shall be protected by air line respirators in accordance with the requirements of Subpart I of this part and by suitable protective clothing. Employees entering such compartments for a limited time shall be protected by filter cartridge type respirators in accordance with the requirements of Subpart I of this part.

(14) All employees doing exterior paint spraying with such paints shall be protected by suitable filter cartridge type respirators in accordance with the requirements of Subpart I of this part and by suitable protective clothing.

§ 1915.118 [Amended]

6. Part 1915 would be amended by removing Table I-1 from § 1915.118.

7. Section 1915.134 would be amended by revising paragraph (j) to read as follows:

§ 1915.134 Abrasive wheels.

* * * * *

(j) All employees using abrasive wheels shall be protected by eye protection equipment in accordance with the requirements of Subpart I of this part except when adequate eye protection is afforded by eye shields which are permanently attached to the bench or floor stand.

8. Section 1915.135 would be amended by revising paragraph (b)(9) to read as follows:

§ 1915.135 Powder actuated fastening tools.

* * * * *

(b) * * *

(9) Employees using powder actuated fastening tools shall be protected by eye protection equipment in accordance with the requirements of Subpart I of this part.

* * * * *

9. Subpart I of Part 1915 would be revised to read as follows:

* * * * *

Subpart I—Personal Protective Equipment

Sec.

- 1915.151 Scope, application, and definitions applicable to this subpart.
- 1915.152 General requirements.
- 1915.153 Eye and face protection.
- 1915.154 Respiratory protection.
- 1915.155 Head protection.
- 1915.156 Foot protection.
- 1915.157 Hand and body protection.
- 1915.158 Lifesaving equipment.
- 1915.159 Personal fall protection equipment.
- Appendix A—Guidelines for the Design and Testing of Personal Fall Protection Equipment

Subpart I—Personal Protective Equipment**§ 1915.151 Scope, application, and definitions applicable to this subpart.**

(a) *Scope and application.* (1) This subpart sets forth requirements for personal protective equipment to be provided for and used by employees in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered by 29 CFR Part 1926.

Note: Appendix A to this Subpart contains non-mandatory guidelines for design and testing of fall protection equipment. Compliance with Appendix A is deemed to constitute compliance with the applicable fall protection provisions.

(2) The provisions of 29 CFR Part 1910, Subpart I—Personal Protective Equipment, do not apply to shipyard workplaces and operations, except for respiratory protection, § 1910.134.

(b) *Definitions applicable to this subpart.*

"Body belt" means a strap with means both for securing about the waist and for attaching to a lanyard, lifeline, or deceleration device.

"Body harness" means a design of straps which is secured about the employee in a manner to distribute the arresting force over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

"Capable person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

"Deceleration device" means any mechanism such as a rope grab, rip-stitch lanyard, specially woven lanyard or automatic-self retracting lifeline, which serves to dissipate more energy during a fall arrest than does a standard line or strap webbing lanyard.

"Hardware" means snaphooks, deerings, buckles or other similar fasteners which are used to connect the components of a personal fall protection system.

"Personal fall arrest system" means a system used to stop an employee in a fall from a working level. It consists of an anchorage, hardware, body belt or body harness, and a lanyard or deceleration device, and may include a lifeline.

"Positioning device system" means a system of equipment which, when used with a body belt or body harness, allows an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free.

"Restraint (tether) line" means a line from an anchorage or between anchorages, to which the employee is secured in such a way as to prevent the employee from walking or falling off an elevated work surface.

"Strength factor" means the ratio of the yield strength of a personal fall arrest system, to the arresting force which would be produced by a 250 pound (113.4kg) person free falling a given distance.

§ 1915.152 General requirements.

(a) *Availability.* The employer shall make available and ensure that employees use personal protective equipment for eyes, face, head, and extremities; protective clothing; protective shields and barriers, personal fall protection equipment; and life saving equipment, meeting the applicable provisions of this Subpart, wherever it is necessary to protect employees and as otherwise required by Part 1915.

(b) *Selection.* Based on an assessment of the workplace hazards relative to personal protective equipment (PPE), employers shall select the types of PPE which will protect employees from the particular occupational hazard(s) they are likely to encounter. Such selection decisions shall be communicated to, and followed by, employees if employees obtain their own equipment.

(c) *Defective and damaged equipment.* Defective or damaged personal protective equipment shall not be used.

(d) *Reissued equipment.* All personal protective equipment which is worn by workers and may have become unsanitary shall be cleaned and disinfected before it is reissued to another employee.

(e) *Training.* Employees shall be trained in the proper use of their personal protective equipment.

§ 1915.153 Eye and face protection.

(a) *General requirements.* (1) Employers shall ensure that employees use appropriate eye or face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, chemical gases or vapors, or potentially injurious light radiation.

(2) Eye and face protection shall properly fit employees.

(3) Protectors with tinted or variable tinted lenses shall not be worn when an employee must pass from a well lighted area, such as outdoors, into a dimly lighted area, such as a warehouse.

(4) Employees who wear prescription lenses while engaged in operations that involve eye hazards shall wear eye protection that incorporates the prescription in their design or shall be protected by eye protection that can be worn over prescription lenses, without disturbing the proper position of the prescription or protective lenses.

(5) Employees shall use equipment with filter lenses which have a shade number appropriate for the work being performed for protection from potentially injurious light radiation. (See Table I-1.)

Note: If filter lenses are used in goggles worn under a helmet which has a lens, the shade number of the lens in the helmet may be reduced so that the sum of the shade numbers of the two lenses will equal the value as shown in Table I-1, § 1915.153.

(b) *Acceptable designs.* The design of eye and face protection shall comply with either paragraph (b)(1) or (b)(2) of this section.

(1) The requirements of American National Standard, ANSI Z87.1-1979, Practice for Occupational and Educational Eye and Face Protection, or alternatively;

(2) Plano (non-prescription) spectacles shall meet the following requirements:

(i) The haze of plano spectacles shall not exceed three percent.

(ii) The prismatic power for plano spectacles shall not exceed one-half prism diopter in any direction; vertical prism imbalance shall not exceed one-fourth prism diopter; and horizontal prism imbalance shall not exceed one-fourth prism diopter "base in," or one-half prism diopter "base out."

(iii) The refractive power, in any meridian, for plano spectacles shall not exceed plus or minus one-sixteenth diopter and the maximum astigmatism shall not exceed one-sixteenth diopter.

(iv) The definition of plano spectacles shall be such that NBS pattern 20 is clearly resolved.

(v) The ratio of the transmittance of the lens in front of each eye shall be not less than 0.90 nor more than 1.10.

(vi) Clear lenses shall have a luminous transmittance of not less than 85 percent.

(vii) Lenses of plano spectacles shall be no less than .079 inches (2 mm) in thickness.

(viii) Plano spectacles and frames shall be capable of withstanding the impact of a one-fourth-inch (6.4 mm) diameter steel ball traveling at a velocity of 150 feet (46 m) per second without breaking, or movement of the protector (or lense) sufficient to contact the eye of a head form when tested on a head form.

(ix) Plano spectacles and frames shall be capable of withstanding, without breaking or movement of the protector (or lense) sufficient to contact the eye of a head form, the impact of a pointed projectile (30 degree vertical tip with a .039 inch (1 mm) radius) weighing 17.6 ounces (500 grams) dropped from a height of 51.2 inches (130 cm) with the eye protection mounted on a horizontally positioned head form.

(x) Plano spectacles shall not continue to burn after a 1.5 second exposure to a two inch (50 mm) flame from a .39 inch (10 mm) bunsen burner.

(xi) The lenses of plano spectacles shall be capable of withstanding, without penetration or fracturing, the impact of a weighted needle weighing 1.56 ounces (44 grams) dropped from a height of 50 inches (1.27 m).

TABLE I-1—FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

Operation	Shade No.
Soldering	2.
Light Cutting up to 1 inch	3 or 4.
Medium Cutting, 1 to 6 inches	4 or 5.
Heavy Cutting, over 6 inches	5 or 6.
Light Gas Welding, up to 1/8 inch	4 or 5.
Medium Gas Welding, over 1/8-1/2 inch	5 or 6.
Heavy Gas Welding, over 1/2 inch	6 or 8.
Shielded Metal-Arc Welding 1/8 to 5/32 inch electrodes	10.
Inert-Gas Metal-Arc Welding (non-ferrous) 1/16 to 1/8 inch electrodes	11.
Inert Gas Metal-Arc Welding (ferrous) 1/16 to 1/8 inch electrodes	12.
Shielded Metal-Arc Welding:	
1/16 to 1/8 inch electrodes	12.
1/8 to 1/4 inch electrodes	14.
Atomic Hydrogen Welding	10 to 14.
Carbon Arc Welding	14.

§1915.154 Respiratory protection.

Respiratory protection for shipyard employment is covered by 29 CFR 1910.134.

§1915.155 Head protection.

(a) *General requirements.* (1) Employers shall ensure that employees wear protective helmets when working in areas where there is a potential for injury to the head from falling or moving objects.

(2) Protective helmets designed to reduce electrical shock hazard shall be worn by employees where they are near exposed electrical conductors which could be contacted by the protective helmets.

(b) *Acceptable designs.* The design of protective helmets shall comply with the requirements of American National Standard, ANSI Z89.1-1986, Requirements for Protective Headwear for Industrial Workers, or shall be of a design which has been demonstrated to be equally effective.

§1915.156 Foot protection.

(a) *General requirements.* Employers shall ensure that employees wear protective footwear when working in areas where there is a danger of foot injuries due to falling or moving objects.

(b) *Acceptable designs.* Effective (90 days after publication of final rule), the design of protective footwear shall comply with the requirements of American National Standard, ANSI Z41-1983, Personal Protection-Protective Footwear, or shall be of a design which has been demonstrated to be equally effective.

§1915.157 Hand and body protection.

(a) *General requirements.* (1) Employers shall ensure that employees wear appropriate gloves and other protective clothing when working in areas and operations in which there is a danger of hand and body injuries due to heat, chemicals, or sharp objects.

(2) Employees shall not wear greasy clothing when performing hot work operations.

(3) Protective electrical insulating gloves and sleeves shall be available and used by employees who may be exposed to electrical shock hazards while working on electrical equipment.

§1915.158 Lifesaving equipment.

(a) *Personal flotation devices.* Personal flotation devices for use by employees shall be of a type approved by the United Coast Guard as a Type I PFD, Type II PFD, Type III PFD or Type V PFD, or the equivalent.

(b) *Life rings and ladders.* (1) When work is being performed on a floating vessel 200 feet (61 m) or greater in length, at least three 30 inch (.78 m) Coast Guard approved life rings with lines attached shall be kept in easily visible and readily accessible places.

Life rings shall be located one forward, one aft, and one on the gangway.

(2) On floating vessels under 200 feet (61 m) in length, at least one 30 inch (.78 m) Coast Guard approved life ring with line attached shall be located at the gangway.

(3) At least one 30 inch (.78 m) Coast Guard approved life ring with a line attached shall be located on each staging float alongside of floating vessel on which work is being performed.

(4) At least 90 feet (27 m) of line shall be attached to each life ring.

(5) There shall be at least one portable or permanent ladder in the vicinity of each floating vessel on which work is being performed of sufficient length to assist employees to reach safety in the event that they fall into the water.

§1915.159 Personal fall protection equipment.

(a) *Personal fall arrest systems.* Personal fall arrest systems (body belts, harnesses, lanyards and lifelines) and their use shall comply with the provisions set forth below.

Note: Requirements for employers to provide fall protection in shipyards are found in other subparts of this Part.

(1) Personal fall arrest systems and components shall be used only for employee protection.

(2) Personal fall arrest systems and their components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection until inspected and determined by a capable person to be undamaged and suitable for reuse.

(3) Lifelines and lanyards shall be protected against cuts, abrasion, burns from hot work operations, and deterioration by acids, solvents and other chemicals.

(4) System performance criteria. (i) Personal fall arrest systems shall be rigged to minimize free fall distance, with a maximum free fall distance of six feet (1.8 m) allowed, and so that the employee will not contact any lower level or obstruction.

(ii) Effective (180 days after publication of final rule), personal fall arrest systems shall decelerate and bring the employee to a complete stop within 42 inches (1.1 m), excluding lifeline elongation and free fall distances.

(iii) Effective (180 days after publication of final rule), personal fall arrest systems, when stopping a fall, shall not produce an arresting force on an employee of more than 10 times the employee's weight (10 gn), or 1,800 pounds (8 kN), whichever is lower.

(iv) Effective (180 days after publication off final rule), personal fall arrest systems shall contain a strength factor of not less than two to one based on a design weight of 250 pounds (113 kg) per employee.

Note: Personal fall arrest systems which comply with the provisions of Section 1 of Appendix A will be deemed to meet the requirements of this paragraph.

(5) Personal fall arrest systems shall be worn with the lanyard or deceleration device attachment point positioned as follows:

(i) When body belts are worn, on the belt anywhere between the sides of the wearer's body on the back portion of the belt;

(ii) When body harnesses are worn, above the waist in the back, or above the wearer's head.

(6) Body-belts shall be at least one and five-eighths inches (4.1 cm) wide.

(7) Hardware shall be made of drop forged, pressed or formed steel or materials equivalent in strength.

(8) Hardware shall have a corrosion-resistant finish and all surfaces and edges shall be smooth to prevent damage to the attached belt or lanyard.

(9) When vertical lifelines (droplines) are used, only one employee shall be attached to any one lifeline.

(10) Personal fall arrest systems shall be secured to an anchorage capable of supporting at least twice the potential impact load and an employee's fall.

(11) Vertical lifelines (droplines) shall have a minimum tensile strength of 5,000 pounds (33.2 kN), except that self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum tensile strength of 3,000 pounds (13.3 kN).

(12) Horizontal lifelines (trolley lines) shall have a tensile strength sufficient to support a fall impact force of at least 5,000 pounds (22.2 kN) applied anywhere along the lifeline per employee using the lifeline.

(13) Lanyards shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN).

(15) Snap hooks shall not be connected to loops made in webbing-type lanyards.

(16) Snap hooks shall not be connected to each other.

(17) Not more than one snap hook shall be connected to any one dee-ring.

(18) Personal fall arrest systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components

shall be removed from service if their function or strength may have been adversely affected.

(19) Before using the equipment, employees shall be trained in the application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(b) *Positioning device systems.*

Positioning device systems and their use shall conform to the following provisions:

(1) All hardware shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached belt or connecting assembly.

(2) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(3) The anchorages for positioning device systems shall be capable of supporting twice the potential impact load of an employee's fall.

(4) Restraint (tether) lines shall have a minimum breaking strength of 3,000 pounds (13.3 kN).

(5) System performance criteria. Effective 180 days after publication of final rule:

(i) A window cleaner's positioning system shall be capable of withstanding without failure a drop test consisting of a six foot (1.83 m) drop of a 250 pound (113 kg) weight. In addition, the system shall limit the initial arresting force to not more than 2,000 pounds (8.89 kN), with a duration not to exceed two milliseconds. Subsequent arresting force peaks shall not exceed 1,000 pounds (4.45 kN);

(ii) All other positioning device systems shall be capable of withstanding without failure a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight.

Note: Positioning device systems which comply with the provisions of Section 2 of Appendix A shall be deemed to meet the requirements of this paragraph.

(6) Care, use, maintenance and storage. (i) Snaphooks shall not be connected to each other.

(ii) Positioning device systems or components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a capable person to be undamaged and suitable for reuse.

(iii) Before using the equipment, employees shall be trained in the application limits, proper hook-up, anchoring and tie-off techniques, methods of use, inspection and storage of positioning device systems.

(7) Inspections. Positioning device systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their functions or strength may have been adversely affected.

Appendix A to Subpart I—Guidelines for the Design and Testing of Personal Fall Protection Equipment

This appendix sets forth test procedures which may be used to assist employers in complying with the personal fall protection requirements of Subpart I. Equipment which meets the following tests will be deemed to meet the applicable design requirements of § 1915.159 of Subpart I:

1. *Personal fall arrest systems*—(a)

General test conditions. (1) Lifelines and lanyards shall be attached to a fixed anchorage and connected to the body-belt or body harness in the same manner as they would be when used to protect employees, except that lanyards shall be tested only when connected directly to the anchorage, and not when connected to a lifeline.

(2) The fixed anchorage shall be rigid, and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(3) The lanyards or lifeline used to create the free fall distance shall be the one supplied with the system, or in its absence, the worst case lanyard or lifeline intended to be used by the employee with the system.

(4) The test weight for each test shall be hoisted to the required level and shall be quickly and cleanly released without having any appreciable motion imparted to it.

(5) Both the strength test and the force test shall each consist of dropping of each of the specified weights once. A new system shall be used for each test.

(6) The maximum elongation shall be recorded during the strength test for lanyard systems, and during the force test for all other systems.

(b) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus five pounds (135 kg plus or minus 2.5 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(2) For lanyard systems, the lanyard length shall be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt.

(3) For rope-grap-type deceleration systems, the length of the lifeline above the centerline of the grabbing mechanism to the lifeline's anchorage point shall not exceed two feet (0.61 m).

(4) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to two feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of one foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight shall fall free

from a point that is 1.5 feet (46 cm) above the anchorage point, to its hanging location a total of 7.5 feet (2.3 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(5) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight shall free fall a distance of four feet (1.22 m).

(6) The system's performance shall be evaluated taking into account the range of environmental conditions for which it is designed.

(7) Any breakage or slippage which permits the weight to fall free from the belt or harness shall constitute failure of the strength test.

(8) Following the test, the system need not be capable of further operation. However, the unusable condition of deceleration devices must be readily apparent.

(c) *Force test*—(1) *For lanyard systems.* (i) A test weight of 130 pounds plus or minus three pounds (59 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(ii) Lanyard length shall be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt.

(iii) The test weight shall fall free from the anchorage level to its hanging location (a total of six feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(2) *For all other systems.* (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(ii) The fall distance to be used in the test shall be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of six feet (1.83 m), except as follows:

(a) For deceleration systems which have a connection link or lanyard, the test weight shall free fall a distance equal to the connection distance (measured between the centerline of the lifeline and the attachment point to the body belt or harness).

(b) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight shall free fall a distance equal to that permitted by the system in normal use. (For example, to test a system with a self-retracting lifeline or lanyard, the test weight shall be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and deceleration distance measured).

(3) The system's performance shall be evaluated taking into account the range of environmental conditions for which it is designed.

(4) A system fails the force test if the recorded maximum arresting force exceeds 1,800 pounds (8.0 kN), when using the 130 pound (59 kg) weight, or 2,500 pounds when using the 220 pound (100 kg) weight.

(5) Following this test, the system need not be capable of further operation. However, the unusable condition of deceleration devices must be readily apparent.

(d) *Deceleration device tests.* (1) A rope-grab-type deceleration device shall be moved on a lifeline 1,000 times over the same length of line a distance of not less than one foot (30.5 cm), and the mechanism must lock each time. Unless the device is permanently marked to indicate the type(s) of lifeline which must be used, several types (different diameters and different materials), of lifelines shall be used to evaluate the device. The device's performance under conditions such as rain, ice, grease, dirt, age, type of lifeline, etc., is to be evaluated or tested.

(2) Other self-activating-type deceleration devices designed for more than one arrest must operate 1,000 times as they would in normal service, without failure. The device shall be evaluated or tested under the environmental conditions for which the device is designed.

2. *Positioning device systems*—(a) *Test conditions.* (1) The fixed anchorage shall be rigid and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(2) For linemen's body belts and pole straps, the body belt shall be secured to a 250 pound (113 kg) bag of sand at a point which simulates the waist of an employee. One end of the pole strap shall be attached to the rigid anchorage and the other end to the body belt. The sand bag shall be allowed to free fall a distance of four feet (1.2 m). Failure of the pole strap and body belt shall be indicated by any breakage or slippage sufficient to permit the bag to fall free to the ground.

(3) For window cleaner's belts, the complete belt must withstand a drop test consisting of a 250 pound (113 kg) weight falling free for a distance of six feet (1.83 m). The weight shall be a rigid object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm). The weight shall be placed in the waistband with the belt buckle drawn firmly against the weight, as when the belt is worn by a window cleaner. One belt terminal shall be attached to a rigid anchor and the other terminal shall hang free. The terminals shall be adjusted to their maximum span. The weight fastened in the freely suspended belt shall then be lifted exactly six feet (1.83 m) above its "at rest" position and released so as to permit a free fall of six feet (1.83 m) vertically below the point of attachment of the terminal anchor. The belt system shall be equipped with devices and instrumentation capable of measuring the duration and magnitude of the arrest forces. Any breakage or slippage which permits the weight to fall free of the system shall constitute failure of the test. In addition, the initial and subsequent arresting force peaks shall be measured and must not exceed 2,000 pounds (8.5 kN) for more than two milliseconds for the initial impact, nor exceed 1,000 pounds (4.5 kN) for the remainder of the arrest time.

(4) All other positioning device systems (except for restraint line systems) shall withstand a drop test consisting of a 250 pound (113 kg) weight falling free for a distance of four feet (1.2 m). The weight shall

be a rigid object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm). The body belt or harness shall be affixed to the test weight as it would be to an employee. The system shall be connected to the rigid anchor as it would be connected in normal use. The weight shall be lifted exactly four feet (1.2 m) above its "at rest" position and released so as to permit a vertical free fall of four feet (1.2 m). Any breakage or slippage which permits the weight to fall free to the ground shall constitute failure of the system.

[FR Doc. 88-27001 Filed 11-28-88; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1915

[Docket No. S-046]

Fall Protection for Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing fall protection. The standards proposed for revision regulate the design, construction, and use of fall protection in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard employment fall protection standards and the appropriate general industry fall protection standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-oriented provisions to address the hazards of falling and of being struck by falling objects.

The specific topic of fall protection is currently addressed in Subpart E of the current Shipyard Employment Standards, along with the topics of scaffolds, ladders, and other walking/working surface considerations. To format the rules into a more logical grouping of topics, this and related actions would retain coverage of ladders and other access and egress concerns in Subpart E, and would relocate fall protection and scaffolds from the current Subpart E to a new Subpart M—Fall Protection, and a new Subpart N—Scaffolds.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-046, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable to hazards and working conditions not specifically covered by Parts 1915, 1916,

or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter substantive requirements. The consolidation did not affect the applicability of general industry standards in 29 CFR Part 1910 to hazards or conditions in shipyard employments not specifically addressed in the consolidated Part 1915 (see 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposal would create new subparts or subpart hearings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of national consensus standards and other materials will be deleted by the proposed standards, and the text of all

such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

The need to have fall protection is currently covered primarily by 29 CFR Part 1915, Subpart E—Scaffolds, Ladders, and Other Working Surfaces, and 29 CFR Part 1910, Subpart D—Walking-Working Surfaces. Consolidation of these two sub-parts into one subpart would result in a large, cumbersome subpart, because of the wide range of topics covered. Therefore, OSHA is proposing to divide the consolidated Part 1915 standards into three subparts. The proposed subparts would be Subpart E—Access and Egress; Subpart M—Fall Protection; and Subpart N—Scaffolds. This reformatting, in and of itself, would neither create nor delete any requirements. These subparts would set forth the requirements to have fall protection, and would set forth the criteria for many of the systems to be used for fall protection. Other fall protection systems, such as body belts, body harnesses, and positioning devices would be covered by proposed Subpart I—Personal Protective Equipment for Shipyard Employment.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions dealt with in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate

the purposes of the Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requires for safety.

The following discussion provides a more detailed explanation of the proposed provisions related to fall protection.

Section 1915.201 Scope, application, and definitions applicable to this subpart.

Paragraph 1915.201(a)—Scope and application. This paragraph outlines the scope and application of the entire Subpart M. The proposal applies to all workplaces and operations found in shipyards, including those aboard vessels and sub-assemblies of vessels, except for the following areas: Fall protection for employees involved in the construction, alteration, repair (including painting and decorating) and demolition of shore facilities would continue to be addressed by 29 CFR Part 1926—Construction Industry Standards, which are not affected by this proposal; fall protection for employees on stairways and ladders would be as provided in proposed Subpart E—Access and Egress; and fall protection for employees on scaffolds would be as provided in proposed Subpart N—Scaffolds.

This proposal incorporates all applicable provisions of 29 CFR Part 1910, Subpart D, related to fall protection, and that subpart no longer applies to fall protection considerations in shipyard workplaces and operations.

Certain of the proposed provisions contain "grandfather" provisions. These provisions allow employers to continue using facilities and equipment which do not meet the proposed requirements, but which do meet the regulations presently in effect. Thus, facilities which are currently meeting the specified OSHA criteria would not have to be replaced or altered to meet the new criteria. However, all new facilities and equipment built or installed after the effective date of this subpart would have to meet the proposed criteria. For example, proposed paragraph § 1915.202(c)(5) requires guardrail systems to be installed at all wall openings which have a bottom edge less than 39 inches above the surface upon which the employee is working. The existing provision, § 1910.23(b)(3), requires guardrail systems only when the bottom edge is less than 36 inches high. Under the proposed rules, the employer would not have to install a guardrail system on wall openings

which meet the existing 36 inch rule. However, all wall openings created or installed in a wall (such as by altering or constructing a building) after the effective date of this standard, would come under the 39 inch rule. In the proposed rules, all "grandfathering" provisions are indicated in brackets ([]) immediately following the new criteria. If a requirement does not contain a bracketed provision, then no "grandfathering" exception is made. In the specific issues section of this preamble, OSHA requests comments as to whether the provisions proposed for "grandfathering" should indeed be "grandfathered," and whether or not other provisions should be "grandfathered."

Paragraph 1915.201(b)—Definitions applicable to this subpart. This paragraph lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standard, however some have been reworded for uniformity or clarity. The following words have been added or have been changed from the existing definitions:

"Dangerous equipment." This term is used to refer to equipment such as galvanizing tanks, machinery, electrical equipment and similar hazards, which are hazards because of their form or function.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definition makes clear that where the standard allows the use of "equivalent" means, the employer must demonstrate that all such alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Failure." This word is used in performance-oriented paragraphs such as (a)(3), (a)(5), (b)(4), (c)(2), and (d)(2) of § 1915.203 which address guardrail, safety net, cover, and toeboard strength. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Guardrail system." This term, which defines guardrails as vertical barriers erected to prevent employees from falling, replaces the existing term, "standard railing" currently used in Subpart D.

"Lower levels." This term is used to describe the areas to which an employee could fall. The definition does not apply

to the surface on which the employee is performing work duties.

"Personal fall arrest system." This term replaces the existing term "safety belt" to reflect current industry use of the new term, and to clarify that, in addition to belts, there are a variety of components that make up a complete fall protection system.

"Positioning device system." This new term identifies a piece of equipment which allows an employee to work with both hands free while the employee is leaning backwards.

"Qualified person." This term is used to describe the training and experience necessary for individuals responsible for performing certain specified tasks such as safety net inspection.

"Toeboard." This term is used to describe one type of falling object protection, and clarifies that such barriers are not installed to prevent an employee from stepping off an otherwise unprotected side or edge.

"U-guard." This is a term used to describe a type of guardrail system used aboard vessels to prevent employees from falling into manholes or other small deck openings. Currently, there is no consensus name for this system. They are known by various names including "hairpins," "fieldgoals," and "horseshoes."

"Unprotected sides and edges." This term replaces the term "unguarded edges" which is not defined in existing Subpart E of Part 1915, and replaces "open-sided floors, platforms, and runways" which is not defined in existing Subpart D of Part 1910.

"Vessel section." This term is used to clarify the areas where certain rules apply. It means all subassemblies, modules, and other components of a vessel which are not directly attached to the vessel because of the state of construction, repair, or breaking.

"Walking/working surface." This term is used as a generic term for all the types of surfaces on which employees must be in order to perform their job duties.

Section 1915.202 Requirements to have fall protection.

This section specifies the places and areas where fall protection systems would be required. The specifics of the fall protection systems are addressed in § 1915.203, fall protection systems criteria and practices. An employer would refer to § 1915.202 to see where fall protection is required, and would refer to § 1915.203 to see how to provide the required protection. This format allows consolidation of the various systems criteria, and eliminates

redundant criteria provisions such as the guardrail height limits currently specified in existing §§ 1915.74(a)(2), (a)(7), (a)(9), (b), and (c)(2).

Paragraph 1915.202(a)—General. Paragraph (a)(1) of § 1915.202 requires all fall protection to be installed and in use before employees begin any other work activity in the area of the fall hazard. Although not specifically stated in the existing provisions, this requirement is not considered by OSHA to be a new requirement.

Paragraph (a)(2) of § 1915.202 would limit the application of the subpart by identifying specific areas where fall protection systems would not be required due to the nature of the activity that takes place in those areas. Generally, these areas are loading or access areas where the provisions of existing Subpart D, literally interpreted, could apply, but where OSHA believes fall protection systems such as guardrails or body belts would unacceptably interfere with the work to be performed. Specifically, these areas are the top water-side edges of wharves, piers, and quays; the loading sides of loading docks, and ladders, vehicles, trailers, and assembly tables. Whether or not this list is too broad, and whether or not other areas or activities should be added to this list, are points raised in the Specific Issues section of this preamble.

Paragraph 1915.202(b)—Fall protection on vessels, vessel sections, and vessel means of access. This paragraph sets forth the requirements to have fall protection for employees aboard vessels, vessel sections, and vessel means of access. The following table lists the proposed provisions of paragraph (b) of § 1915.202 which would not be substantively changed from their corresponding counterparts contained in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.202(b) (2)	§ 1915.73(c)
§ 1915.202(b) (3)	§ 1915.73(d)
§ 1915.202(b) (5)	§ 1915.77(e)
§ 1915.202(b) (7)	§ 1915.73(g)
§ 1915.202(b) (8)	§ 1915.77(b)
§ 1915.202(b) (9)	§ 1915.75(d)
§ 1915.202(b) (11)	§ 1915.74(a) (2)

Paragraph (b)(1) of § 1915.202 requires covers or guardrails to be used to protect employees working near small openings in the walking/working surfaces aboard vessels. This is the same requirement as § 1915.73(b), except that U-guards would be recognized as an acceptable alternative system for fall protection. These systems, variously known as "hairpins," "fieldgoals,"

"horseshoes," and other colloquialisms, are currently used in many shipyards. However, a uniform set of criteria for U-guards (i.e., height limits, strength, etc.), has not yet been developed. The need for such criteria, along with some criteria which have been suggested to OSHA, is discussed in the Specific Issues section of this preamble. Another change is the deletion of the words "or the physical conditions" from the phrase which qualifies when guardrail systems must be used or installed. These words are not necessary as the "impossibility" of a requirement is always to be considered.

Paragraph (b)(4) of § 1915.202 requires personal flotation devices to be used to protect employees on vessels afloat working near unprotected sides and edges which are over water. This is the same requirement as § 1915.73(e), except "platforms, flats, and similar surfaces above water on vessels afloat" has been added to make the provision compatible with proposed § 1915.202(b)(3) which addresses fall protection above solid surfaces.

Paragraph (b)(6) of § 1915.202 guardrails or planks to be used to protect against falling into bilges where floor plates or gratings have been removed. This is the same requirement as § 1915.73(f), except the requirement for 10-inch planking is clarified by adding a thickness dimension of two inches. Two-inch planking is the standard size used on similar surfaces such as scaffold platforms (see § 1915.71(i)(1)).

Paragraph (b)(10) of § 1915.202 would require employees to be protected against falling into the water when they are on the deck of a floating drydock. This is essentially the same rule as existing § 1915.75(e), except that the existing rule only requires employees to be provided with fall protection equipment, whereas the proposal requires that such equipment be both provided and used.

Paragraph 1915.202(c)—Fall protection ashore. The paragraph sets forth the requirements to have fall protection for employees ashore, and addresses all areas in a shipyard covered by the subpart which are not on a vessel, vessel section, or vessel means of access. Such areas include, but are not limited to, office buildings, shops, foundries, assembly buildings, storage tanks, warehouses, elevated walkways (catwalks), retaining walls, derricks, cranes and gantries. These areas are presently covered by the provisions of Part 1910, Subpart D—Walking/Working Surfaces, which require fall protection to be provided wherever a fall hazard of four feet or more exists. However,

existing specific provisions § 1915.71(j), § 1915.71(k), § 1915.73(d), and § 1915.77(c) require fall protection only where the fall hazard is five feet or more. Some yards have concluded that the five foot limit applies to all areas in a shipyard. To eliminate this conflict and resulting confusion, paragraph (c) of § 1915.202 clearly sets forth that the four foot rule of the existing general industry standards applies to all areas in shipyards, with certain specific exceptions made in the scope and some other areas which are discussed below. However, public comment is requested on this point in the Specific Issues section of this preamble.

Paragraph (c)(1) of § 1915.202 specifies that guardrail systems shall be used to provide fall protection for employees on floors, roofs, ramps, walkways, graving dock edges, and other walking/working surfaces. However, when this is impracticable, then personal fall arrest systems, positioning device systems, or safety nets shall be used. This is essentially the same requirements as in existing Part 1910 Subpart D, and Part 1915 Subpart E, except that the proposed rules would add safety nets as an acceptable alternative under certain conditions, and that guardrail systems are listed in the proposed rules as the preferred method of protection when their use is practicable. Guardrail systems are preferred because they serve to restrain employees from falling off a work level, whereas personal fall arrest systems and safety nets function only after a fall has taken place, and positioning device systems offer no protection when a worker changes locations. Whether or not it is practicable to install a guardrail system depend on the specifics of the area where protection is required. For example, guardrail systems are not practicable if their installation requires greater employee exposure to the fall hazard than would be experienced by employees working in the area without guardrail system protection. In order to further develop this point, public comment is requested on this issue in the Specific Issues section of this preamble.

Paragraph (c)(2) of § 1915.202 requires employees to be protected by personal fall arrest systems when they are in an area provided with guardrail systems, but in which the guardrails, or portions thereof, have been removed to allow passage of materials, tools, or equipment. This situation usually is most hazardous when the employees are leaning out through the opening while trying to guide the incoming materials,

or when they are trying to signal someone on another level.

Paragraph (c)(3) of § 1915.202 requires employees to be protected by guardrail systems or equipment guards when the employees are less than four feet above dangerous equipment. This rule is essentially the same provision as in § 1910.23 (c)(3), and addresses the nature of the impact surface which could cause a serious injury. Personal fall arrest systems and nets would not be allowed for this kind of protection at heights less than four feet above the dangerous equipment, because such systems are usually not rigged in such a way as to prevent employee contact with the dangerous equipment.

Paragraph (c)(4) of § 1915.202 requires employees to be protected by guardrail systems, personal fall arrest systems, or safety net systems when the employees are four feet or more above dangerous equipment.

Whereas paragraph (c)(1) of § 1915.202 addresses perimeter or unprotected sides and edges of walking/working surfaces ashore, paragraph (c)(5) of § 1915.202 addresses holes in such surfaces (the term "opening" is used for spaces in walls). The provision requires that all holes into which employees can accidentally walk be protected by guardrail systems, covers, or an attendant. This is essentially the same requirement as contained in paragraphs (a)(3), (4), (5), (6), (7) and (8) of § 1910.23. However, whether or not an attendant is an appropriate method of protection, and, if so, what conditions or limitations should be imposed on its use, are points raised in the Specific Issues section of this preamble.

Paragraph (c)(6) of § 1915.202 requires tanks, vats, and similar enclosures to be provided with guardrail systems or covers. This is essentially the same provision as § 1910.22(c).

Paragraph (c)(7) of § 1915.202 requires certain specified wall openings to be provided with fall protection. This provision is based on the requirement, § 1910.23(b), except the minimum distance from the walking/working surface to the bottom edge of the wall opening is changed from 36 inches to 39 inches, consistent with the proposed minimum fall protection criteria proposed for all other locations. However, the existing 36-inch limit is "grandfathered" so that all facilities constructed prior to the effective date of this standard will not have to be changed.

Paragraph 1915.202(d)—Protection from falling objects. This paragraph sets forth when protection from falling objects must be provided and is essentially the same as § 1910.23(c)(1)(i),

except screens, guardrail systems, or protective canopies may be used in lieu of toeboards. The proposal requires such protection only as necessary when employees are on or immediately adjacent to vessels or vessel sections.

Section 1915.203 Fall protection systems criteria and practices.

This section sets forth the requirements for each type of fall protection system and its use. Whereas § 1915.202 tells the employer where fall protection is required and the types of systems which are to be used to provide that protection, § 1915.203 states the proper manner to install and use each system. In other words, § 1915.202 is the "where, what and when" provision, and § 1915.203 is the "how" provision.

Paragraph 1915.203(a)—Guardrail systems. This paragraph sets forth the criteria for constructing and using guardrail systems (both fixed and portable) installed to meet the requirements of § 1915.202. Paragraph (a)(1) of § 1915.203 specifies the limits for the top edge heights of various guardrail systems.

Paragraph (a)(1) (i) and (ii) of § 1915.203 set forth the height criteria for specified guardrail systems aboard vessels, vessel sections, and vessel means of access. These are essentially the same provisions as contained in paragraphs § 1915.73 (c) and (d), except the words "vessel sections" have been added. In the Specific Issues section of this preamble, public comment is requested on whether or not these two provisions should be changed to conform to the general height requirement of 39 to 45 inches proposed for all other guardrail systems.

Paragraph (a)(1)(i) of § 1915.203 sets the height requirements for all guardrail systems used throughout shipyards, except those on vessels, vessel sections, and vessel means of access covered by paragraphs (a)(1)(ii) and (iii) of § 1915.203. This paragraph consolidates the following eight existing requirements:

Existing paragraph number	Existing provision
§ 1910.23(e)(1)	"42 inches nominal"
§ 1915.73(d)	"42 to 45 inches"
§ 1915.73(g)	"adequate"
§ 1915.75 (b), (c), (d)	"approximately 42 inches"
§ 1915.75(e)	"42 inch"
§ 1915.75(g)	"42 to 45 inches"

OSHA currently interprets the words "nominal," "adequate," and "approximately" to mean a range of 39 to 45 inches. The proposal formally adopts this range for guardrail systems

in general. However, many shore facilities were constructed prior to OSHA's inception, and were built to comply with building codes and other guidelines which require[d] guardrails to be only 36 inches high. These existing systems would be "grandfathered" by the proposal. However, as existing systems are replaced they would have to meet the new minimum limit. Existing guardrails which are repaired need only meet the 36-inch limit. Public comment is requested on these points in the Specific Issues section of this preamble.

Paragraph (a)(2) of § 1915.203 requires midrails, screens, mesh, intermediate vertical members (i.e., balusters), or equivalent structural members to be installed between the top edge of the system and the walking/working surface where there is no wall or parapet wall at least 21 inches high (the same height as a typical midrail on a 42-inch high guardrail system). This is essentially the same requirement as §§ 1910.23(e)(3)(v)(c) and 1915.71(j)(1). Paragraph (a)(2)(i) specifies midrail height and is the same requirement as in §§ 1910.23(e)(1) and 1915.71(j)(1). Paragraphs (a)(2) (ii), (iii), and (iv) are new alternative provisions that allow for the use of screens, mesh, intermediate vertical members, and other structural members in lieu of midrails, and address their proper placement. Although these are new provisions, OSHA believes they lessen the existing burden of compliance by expanding the range of options available to the employer.

Paragraph (a)(3) of § 1915.203 requires guardrail systems to be capable of withstanding the application of a 200 pound force applied within two inches of the top edge in an outward or downward direction. This is the same requirement as § 1910.23(e)(3)(v)(b) and is equivalent to § 1915.71(j)(2) which specifies 2 × 4 inch lumber at eight foot distances between uprights.

Paragraph (a)(4) of § 1915.203 clarifies that paragraphs (a) (1) and (3) of § 1915.203 are interdependent provisions. When the load is applied to the toprail or edge, it must not deflect below the system height set forth in paragraph (a)(1) of § 1915.203. Deflection is specified for the top edge because that is the point an employee is most likely to fall against, and it must remain high enough, at all times, to prevent the employee from flipping over the top of the system.

Paragraph (a)(5) of § 1915.203 provides specifications for midrails, screens, mesh, intermediate vertical members, and equivalent structural members. Currently, there is no requirement that

sets forth a minimum strength capacity for midrail type protection. The proposed 150 pound capacity requirement is based on the existing construction safety standard for guardrails, which allows the use of 1 x 6-inch lumber as midrails. The breaking strength of such lumber is approximately 160 pounds, depending on type and grade of wood used. The 150 pound limit is also being evaluated for inclusion in the proposed standards being developed for the construction and general industry standards for guardrail systems. The proposal here will promote consistency between all three sets of guardrail system standards. No minimum deflection is specified as midrails, screens, mesh, and intermediate vertical members are not the points where an employee is in danger of flipping over the protective barrier.

Paragraph (a)(6) of § 1915.203 requires that guardrail systems be smooth surfaced to prevent employee injury due to lacerations or tripping caused by snagged clothing, and is essentially the same requirement as § 1910.23(e)(1).

Paragraph (a)(7) of § 1915.203 requires that top rails and midrails not be so long as to constitute a projection hazard, and is the same requirement as § 1910.23(e)(1).

Paragraph (a)(8) of § 1915.203 is a new requirement and prohibits the use of steel banding and plastic banding as top rails or midrails. While such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand when grabbed.

Paragraph (a)(9) of § 1915.203 requires all rails to be at least one-quarter inch in diameter or thickness. This is consistent with previous OSHA interpretations related to the use of wire cable as top rails and midrails. As guardrail strength is specified in paragraphs (a)(3), (4), and (5) of § 1915.203, the purpose of this requirement is to assure that rails made of high strength materials not be so thin that an employee grabbing a rail is injured because of the small size of the rail.

Paragraph (a)(10) of § 1915.203 prohibits the use of manila or synthetic fiber rope rails when hot work is being performed or corrosive chemicals are being used near the rails. This is essentially the same provision as the requirement contained in § 1915.71(j)(2). It is a new requirement for facilities ashore, but the hazard is the same as on vessels.

Paragraph (a)(11) of § 1915.203 requires chains, gates, or guardrail sections to be placed across material, tool, and equipment access openings

when handling operations are not taking place. This provision clarifies that such openings in guardrail systems are to be treated as unprotected sides and edges except when the opening is in use. The rule is based on similar provisions in § 1910.23(c).

Paragraph (a)(12) of § 1915.203 provides that when guardrail systems are used at holes in walking/working surfaces, they be erected on all unprotected sides or edges of the holes. This is essentially the same requirement as in § 1910.23(a).

Paragraph (a)(13) of § 1915.203 provides that guardrail systems around holes used for material access not have more than two sides provided with removable guardrail sections. This is essentially the same provision as § 1910.23(a)(3)(ii).

Paragraph (a)(14) of § 1915.203 provides that guardrail systems around holes used as points of access (such as ladderways) shall be provided with gates or be so offset that a person cannot walk directly into the hole. This is essentially the same requirement as § 1910.23(a)(2).

Paragraph (a)(15) of § 1915.203 sets forth the requirements for guardrail systems on ramps and runways and is essentially the same provision as § 1910.23(c)(2).

The provisions in existing § 1910.23(e)(3) and § 1915.71(j)(2) provide detailed specifications for minimum sizes of guardrail system components. The proposal would relocate the specific provisions of these existing paragraphs to Appendix A, and would make them non-mandatory. The current *specifications by themselves do not assure that a guardrail system meets the current performance criteria in § 1910.23(e)(3) as they give no guidance on joints, base connections, and other elements that need to be considered when providing an adequate system.* However, by moving them to a non-mandatory appendix, they can serve as a starting point for designing guardrail systems. As the guidelines do not provide all the information necessary to build a complete system, the employer is still responsible for designing and assembling the components in such a way that the completed system will meet the requirements of § 1915.203(a)(3), (4), and (5). By placing the existing specification criteria into a non-mandatory appendix, design flexibility is allowed to employers who desire to engineer their own guardrail designs, while also providing a partial solution for employers who either do not desire to or cannot engineer the guardrails that are to be used. OSHA believes that the important consideration in guardrail

system design and construction is that the system be capable of supporting safely the loads as specified in paragraphs (a)(3), (4) and (5) of § 1915.203, and not that a guardrail system have a particular sized component or post spacing.

The relocation of the current specifications to Appendix A does not reduce the level of safety presently achieved by the existing standard. The performance criteria in the proposal are essentially the same as those currently found in § 1910.23(e)(3)(v). The specifications being moved to Appendix A provide, at best, a partial solution to the design of an adequate system, and they do not allow the necessary flexibility for development of systems which meet the performance criteria in the standard. Accordingly, relocating the specifications to Appendix A reduces the number of redundant provisions in the standard and eliminates the possible misinterpretation that the specified components and constructions are the only ones acceptable for building guardrail systems.

Paragraph 1915.203(b)—Safety net systems. This paragraph sets forth the criteria for safety net systems installed to meet the requirements of § 1915.202. Currently, there are no similar provisions in either Subpart D of Part 1910 or Subpart E of Part 1915. The proposed provisions are, therefore, based on the existing and proposed provisions for safety nets contained in 29 CFR Part 1926, Occupational Safety and Health Standards for the construction industry. These provisions are presently in § 1926.105, and a modified version of these standards is contained in § 1926.502(c) of OSHA's proposed revision to the fall protection standards for construction (51 FR 42718) published on November 25, 1986. These provisions do not impose new burdens on the employer, but allow the use of safety nets as an option for meeting the general fall protection requirements of § 1915.202. This option is not given under the existing shipyard and general industry rules.

Paragraph (b)(1) of § 1915.203 requires nets to extend outward at least 15 feet from the outermost projection of the work surface. This is a change from the existing eight foot requirement of § 1926.105(c)(1). The National Bureau of Standards (NBS) has conducted tests to evaluate this requirement. Their findings indicate that at least 15 feet are required to fully contain a body falling 25 feet (Ref. 3:50).

Paragraph (b)(2) of § 1915.203 requires safety nets to be installed as close as practicable under the walking/working

surface where employees need to be protected, but in no case more than 25 feet below such level.

Paragraph (b)(3) of § 1915.203 requires nets to be rigged with sufficient clearance under them to prevent contact with the lower level when the net is subjected to impact forces as specified in paragraph (b)(4) of § 1915.203.

Paragraph (b)(4) of § 1915.203 specifies the capacity requirements for safety nets and safety net installations. The paragraph requires employers to show that nets and net installation meet the capacity requirements by conducting drop tests meeting designated parameters, or by certification by a qualified person that the net and net installations meet all specified criteria when the employer can demonstrate that drop testing is not practicable. An example of where a drop test may not be practicable is where the net is strung over a public thoroughfare and the test could endanger people below. Another example is where the test weight cannot be readily retrieved from the net once it has been dropped.

For the purposes of paragraph (b)(4), OSHA considers two or more net panels joined together to be one net. Safety net installations which do not share the same net are considered to be separate systems. In addition, each time a safety net system is erected, it is considered to be a separate installation which must be tested or certified.

Paragraph (b)(4)(i) of § 1915.203 sets forth the proposed criteria for performing drop tests on net installations. In most respects, these criteria are the same as the paragraph 8 requirements of ANSI A10.11-1979 (Ref. 1). However, the proposal requires the test to be conducted from the highest level walking/working surface on which employees are to be protected, as opposed to the 25 foot height required by ANSI, so that the test more closely resembles the type of fall from which the worker is to be protected. OSHA believes the use of a 400 pound weight to test the system is sufficient to insure that a proper margin of safety is obtained.

Paragraph (b)(5) of § 1915.203 requires safety nets to be inspected weekly for mildew, wear, damage, or other deterioration. Defective components must be removed from service. Public comment is requested on the frequency of inspection in the Specific Issues section of this preamble.

Paragraph (b)(6) of § 1915.203 requires debris and tools to be removed as soon as possible from the net, but not later than the start of the next work shift. Such obstacles pose obvious safety hazards to anyone who falls into the net.

Paragraph (b)(7) of § 1915.203 specifies the maximum allowable mesh opening and provides for a maximum of six inches on any side of an opening. The proposal also limits the size of the opening to a maximum of 36 square inches. This limit is proposed because mesh openings can be manufactured with more than four six-inch sides. A limit of 36 square inches is necessary to keep the open mesh from being so large that an employee's head could go into it during a fall and possibly break the employee's neck. The provision is essentially the same as paragraph 5.1 of the 1979 ANSI requirements for safety nets.

Paragraph (b)(8) of § 1915.203 specifies a minimum breaking strength of 5,000 pounds for border ropes used for net webbing. This is the same requirement as in paragraph 5.2 of the 1979 ANSI requirements for safety nets.

Paragraph (b)(9) of § 1915.203 requires connections between net panels to be as strong as integral components, and to be spaced not more than six inches apart. This is essentially the same requirement as § 1926.105(f), except the six inch requirement is based on the 1979 ANSI requirement contained in paragraph 9.3.

Paragraph 1915.203(c)—Covers. This paragraph, which is based on § 1910.23(e)(7) and (8), sets the performance criteria for covers used to protect employees from falling into or through holes in floors, roofs, roadways, vehicular aisles, and other walking/working surfaces on shore. Public comment is requested in the Specific Issues section of this preamble as to whether or not these provisions should also apply to vessels, vessel sections, and vessel means of access.

Paragraph (c)(1) of § 1915.203 requires covers in roadways and vehicular aisles to be capable of supporting at least twice the maximum axle load of the largest vehicle expected to cross over the cover. This is a change from the § 1910.23(e)(7) requirement that covers be capable of supporting at least 20,000 pounds, and is intended to reflect more accurately actual workplace conditions. Existing covers in use would be "grandfathered." Public comment is requested on this point in the Specific Issues section of this preamble.

Paragraph (c)(2) of § 1915.203 specifies the minimum strength requirements for all other covers. Whereas the existing rule, § 1910.23(e)(7)(iii), requires all other covers to meet unstated "strength requirements," the proposed rule specifies that the covers be capable of withstanding the maximum total anticipated load, or 250 pounds, whichever is greater. This 250 pound minimum capacity is based on what

OSHA considers to be the average maximum weight of an employee and the employee's tools.

Paragraph (c)(3) of § 1915.203 is a requirement for covers to be installed so as to prevent accidental displacement.

Paragraph (c)(4) of § 1915.203 requires that covers over steam pits not be made of plywood, and is a new provision. Plywood covers which become steam-saturated can easily delaminate and become incapable of supporting a load, although they appear to be as strong as when first installed.

Paragraph (d)—Protection from falling objects. This paragraph sets forth the performance criteria for providing protection from falling objects as required by § 1915.202. Paragraph (d)(1) of § 1915.203 requires toeboards, when used, to be erected along the edges of overhead walking/working surfaces for a distance sufficient to protect employees using the point of access below. This is essentially the same provision as contained in § 1910.23(c)(1)(i), and in § 1915.71(j)(5) as currently applied to shipyards.

Paragraph (d)(2) of § 1915.203 specifies the minimum strength of toeboards. This requirement is the equivalent performance requirement to existing requirements §§ 1910.23(e)(4) and 1915.71(j)(5).

Paragraph (d)(3) of § 1915.203 specifies how toeboards are to be installed, and is essentially the same as § 1910.23(e)(4).

Paragraph (d)(4) of § 1915.203 provides that additional protection must be used, where tools, equipment, or materials are higher than the top of a toeboard, such as paneling or screening erected from the working level or toeboard to the top of the toprail or midrail. This requirement is substantively the same as § 1910.23(e)(4).

Paragraph (d)(5) of § 1915.203 requires that when guardrail systems are used to prevent objects from falling, the openings in the system must be small enough to retain the potential falling objects. This is essentially the same requirement as § 1910.23(e)(4), except the specific limitations on hole size are deleted, and the provision applies to all such guards and not just toeboards.

Appendix A to Subpart M—Guardrail Systems

This appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of paragraphs (a)(3), (4), (5), and (d)(2) of § 1915.203. The guidelines are taken from the existing regulations as discussed above. An

employer may use these guidelines as a starting point for designing guardrail and toeboard systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of paragraphs (a)(3), (4), (5), and (d)(2) of § 1915.203. Components for which no specific guidelines are given in the appendix (e.g., joints, base connections, components made with other materials, and components with other dimensions) must also be designed and constructed in such a way that the completed system will meet the capacity requirements of paragraphs (a)(3), (4), (5), and (d)(2) of § 1915.203. The appendix neither creates additional obligations nor eliminates obligations otherwise contained in the standard. It is intended to provide useful, explanatory material and information to employers and employees who wish to use it to aid in understanding and complying with the standard.

Specific Issues

In addition to any other comments on this subpart, the public is requested to comment on the following specific issues:

1. Paragraph (a)(2)(ii) of § 1915.201 lists several areas where fall protection would not be required. Public comment is requested on whether this list is too limited or too broad. Comments requesting that specific areas of activities be added to the list should demonstrate why fall protection is not necessary. Comments requesting that the list of exceptions be narrowed should describe the fall protection systems and procedures that are available and feasible for use in the specified area.

In addition, public comment is requested on whether or not there are areas or operations, in addition to those already identified in proposed § 1915.202(b) and § 1915.202(c), which have unique fall protection requirements not presently addressed by the proposed standards. Comments on this point should describe such areas and operations in detail, and should discuss the fall protection system or work practices which should be used.

2. Paragraph (b)(1) of § 1915.202 allows the use of U-guards as fall protection on manholes and other small openings aboard vessels. Comment is requested on whether or not such guards should be allowed. If such guards should be allowed, comment is requested on whether or not any or all of the

provisions of § 1915.203(a) are appropriate criteria and should apply. Comment is also requested on whether or not there are any other relevant considerations that should be addressed pertaining to the proper use of such guards.

3. Paragraph (b)(4) of § 1915.202 requires employees to wear personal flotation devices when working near unprotected sides and edges of decks, platforms, flats, and similar surfaces above water on vessels afloat. Comment is requested on whether or not this requirement should apply aboard all vessels with unprotected sides and edges above water, and not just those afloat. An example of where this may be appropriate is a vessel on a marine railway which has been partially hauled out of the water for work, and which has a portion of its deck edges over water. Similarly, public comment is requested on whether or not this requirement should apply any time an employee is working near unprotected sides and edges of shore facilities which are above water (i.e., wharves, piers, docks, and buildings).

4. What are appropriate fall protection requirements for vessel sections in assembly areas adjacent to building ways or vessels that are being worked on? These sections are often placed on large tables which are four or more feet above ground levels and which, therefore, almost always create a fall potential of four feet or more. However, the work on such sections may be of a relatively short duration compared to the time and exposure necessary to install guardrail systems or anchorages for personal fall protection equipment. Other sections can be quite large with correspondingly greater exposure to fall hazards which outweigh the installation considerations.

5. Paragraph (c)(1) of § 1915.202 requires fall protection whenever employees are working ashore on walking/working surfaces with unprotected sides and edges which are four feet or more above lower levels. This is the same general rule as in Part 1910, which OSHA considers to be applicable to those areas of shipyards not presently covered by Part 1915. However, some existing rules developed specifically to reflect shipyard considerations (see §§ 1915.71 (j), (k), 1915.73(d), and 1915.77(c)) specify the limit to be five feet in certain specified areas. These rules have led some yards to consider the five-foot limit to be applicable in all shipyard areas (with certain exceptions for scaffolds covered by Part 1910) and have provided fall protection systems accordingly. Public comment is requested on whether the

appropriate limit should be four feet or five feet. Comments should include appropriate cost and injury data, and, as appropriate, discuss the necessity to "grandfather" existing five foot installations.

6. Paragraph (a)(1) of § 1915.203 specifies three different minimum guardrail system heights, depending on where the system is installed. Comment is requested on whether all systems should be required to meet the 39 to 45 inch (42 inch nominal) requirement, and if not, what factors support the use of different guardrail heights.

7. Paragraph (b)(5) of § 1915.203 requires safety nets to be inspected weekly for deterioration. Comment is requested on whether or not this period of time is appropriate or if some lesser or greater period should be required, and the reason for the period selected.

8. Paragraph (c) of § 1915.202 requires all hole covers not on vessels, vessel sections, or vessel means of access to meet certain specified criteria. Comment is requested on what criteria should be used for covers used on vessels (other than those which are an integral part of a vessel), vessel sections, and vessel means of access, and the basis for establishing such criteria.

9. Should OSHA promulgate a rule requiring covers to be painted or otherwise clearly marked to indicate their function as a cover? Covers are often only pieces of plywood, and the purpose of this rule would be to help employees distinguish between a covered hole and debris.

10. Paragraphs (b)(1) through (3), (b)(6) and (b)(10) of § 1915.202 require the use of guardrails on vessels when such use is practicable. These provisions are based on existing provisions § 1915.73(b) through (d), (f), and § 1915.75(e). Public comment is requested on the actual conditions that must exist before these provisions become impracticable. In addition, public comment is requested on the need to use other fall protection systems when guardrails are impractical; what these other systems should be; and the circumstances in which these other systems are appropriate for use.

11. Should OSHA promulgate rules requiring the inspection of work surfaces to determine their structural integrity prior to employees being required to work on such surfaces? Currently, there are no specific requirements that address this concern. The purpose of these inspections would be to insure that work surfaces have the requisite strength so as not to collapse under the weight of employees, tools, and materials. That such a rule may be

needed is evidenced by a study conducted by OSHA (Ref. 2, page 77). That study shows that of eight fatalities of employees falling through ceilings, four of the accidents were caused by the work surface not being capable of supporting the employee's weight. The study also shows that of 55 fatalities resulting from falls from roof levels, approximately eight were caused by the employees working on surfaces with insufficient structural strength to support their weight. Comments should address the types of inspection criteria necessary, the methods to be used, and the qualifications of the inspectors.

12. Paragraph (d) of § 1915.202 allows protective canopies to be erected as an alternative form of falling object protection. Comments are requested on whether or not the following criteria, based on existing construction safety standards, would be appropriate for shipyard application: "Canopies shall be erected not more than nine feet above the work surface, and shall consist of two inch planking, or material of equivalent strength, laid tight, and extending the width and length of the impact area." If this criteria should not be used, what criteria should be specified in § 1915.203(d) to assure proper protection for employees?

13. Paragraph (d)(9) of § 1915.202 allows guardrail systems to be removed where necessary to permit line handling of floating dry docks. Comment is requested on whether or not personal flotation devices should be required on employees when guardrails are removed, and under what conditions such protection is necessary.

14. Many shipyards have the capability of floating a ship into a fixed area where the water can be removed and the ship drydocked. Such areas are variously termed graving docks, graving basins, basins, drydocks (as opposed to "floating drydocks, ship ways, and other terms. Comment is requested on whether or not there is one term which can be used to describe these areas. If not, comment is requested on what other terms are also used to describe these areas so that OSHA may combine them into one definition.

15. Paragraphs (a) (11) through (15) of § 1915.203 specify requirements for the use of guardrail systems which are not on vessels, vessel sections, and vessel means of access. The requirements address materials handling access areas, holes, personnel access, and narrow ramps. Comment is requested on whether or not these rules should also apply to vessels, vessel sections, and vessel means of access.

16. Paragraph (c)(4)(ii) of § 1915.202 allows the use of an attendant to protect

an opening in a walking/working surface when a cover is open or removed. This provision is based on existing provisions § 1910.23(a)(5) through (8). Public comment is requested on whether or not this is an appropriate method of fall protection, and whether any conditions should be placed on its use.

17. OSHA is proposing to revise its provisions covering the minimum height of guardrail systems (§ 1915.203(a)(1)(i)), the minimum height of wall openings before guardrail protection is required (§ 1915.202(c)(5)), and the minimum strength of covers (§ 1915.203(c)(1) and (2)). These changes would bring the shipyard employment standards into conformance with similar provisions being developed for the construction industry safety standards and the general industry safety standards. However, as noted in the Summary and explanation of the Proposal, OSHA proposes to "grandfather" certain existing situations with respect to these provisions. Public comment is requested on whether or not existing guardrail systems, wall openings, and covers should be "grandfathered," and whether or not other facilities should be "grandfathered." Comments should include a discussion of related cost, injury, and feasibility data.

18. Both the current § 1910.23(c) and the proposed § 1915.202(c) require fall protection systems to be erected or used at all unprotected sides and edges of floors (open-sided floors) and similar walking-working surfaces. As worded, the existing provision can be interpreted to mean that a guardrail is required around an open-sided floor even when employees on the floor are working near the middle of the floor and are removed from the perimeter fall hazard. The proposed language could also be interpreted to require the same degree of protection. The existing provision can also be interpreted to mean that a citation for lack of fall protection should be issued only when employees are working near the unprotected side or edge and are thus exposed to the fall hazard. Public comment is requested on whether or not a distance (or some other method of defining exposure) should be specified whereby fall protection would be required only when an employee is within that distance of a fall hazard. Proponents of such a limit should state what that distance should be, and why. Proponents of the existing language, as modified in the proposal, should state why a limit would not be appropriate. All comments should include appropriate cost and injury data.

19. In some of the existing provisions and in some of the proposed provisions,

OSHA uses specific numerical limits to define and clarify the duties set forth. For example, existing § 1915.73(d) and proposed § 1915.203(a)(ii) require guardrail systems to be used around all open hatches not protected by coamings at least 24 inches high. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "guardrails shall be used around all hatches where there is a fall hazard," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employers and employees about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

III. References

1. American National Standard ANSI A10.11-1979, *American National Standard for Safety Nets Used During Construction, Repair, and Demolition Operations*,

American National Standards Institute, New York.

2. U.S. Department of Labor, Occupational Safety and Health Administration, *Occupational Fatalities Related to Roofs, Ceilings, and Floors as Found in Reports of OSHA Fatality/Catastrophe Investigations*, November 1979.

3. Yancy, Carino and Sansalone, *Perimeter Safety Net Projection Requirements*, Center for Building Technology, National Bureau of Standards, Washington, DC, May 1986 (NBSIR 85-3271).

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action. The expected annualized costs of full compliance would be about \$305,000.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the *Federal Register*.

In light of the data currently available to OSHA, the economic impact estimates presented in this preamble are rough estimates which are likely to be refined as OSHA receives additional information.

OSHA solicits further comments on the estimates presented in this preamble and those comments will be addressed and incorporated in the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the November 1985, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support a Regulatory Analysis of the Proposed Standard for shipbuilding and Repairing." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed consolidation of the fall protection sections of the existing Part 1915, Subpart E, and the existing Part 1910, Subpart D. In recent

years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 687 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

OSHA has estimated that every shipyard employee frequently works at an elevation that would require the worker to be protected from falling. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 workers in 1986. Consequently, given the potential for large changes in the demand for this industry's product, OSHA has estimated that the population-at-risk would be between 136,300 and 180,000 employees.

Risk of Fatality or Injury

OSHA has estimated that the annual number of injuries in shipyards due to falls from those elevations covered under this subpart was between 905 and 1,460 between 1981 and 1986. Of these injuries, 460 to 825 were lost workday injuries. As the average number of lost workdays per lost shipyard workday injury was between 20.4 and 26, OSHA has estimated that the annual number of lost workdays in shipyards due to falls from elevations would be between 10,330 days and 16,980 days.

In addition, OSHA has determined that there would be between one and two annual fatalities in shipyards associated with falls from elevations.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving working at elevations in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because

consolidating two sets of these requirements into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Consequently, it could make compliance less costly while maintaining employee safety. Thus, the proposed consolidation may lead to an increase in compliance which, in turn, may lead to an increase in employee safety during work at elevations.

The second source is the benefits and decreased costs that should accrue to those employers who would be allowed to use certain safety systems and equipment that are not allowed by the existing specification requirements but would provide the same level of employee safety as that generated by the specifications. The use of these systems and equipment would allow employers to provide the necessary level of safety for their employees at less cost than is possible under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD Report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

Based on the CONSAD report, OSHA has determined that there is one provision that would involve costs of compliance. The proposed consolidation requires that all new guardrails and temporary guardrails have a minimum toprail height of 39 inches. Existing guardrail systems, however, are exempted from this provision.

Using the baseline of existing industry practice, OSHA has estimated the annualized costs of compliance with the proposed consolidation to be about \$305,000. Nevertheless, as previously mentioned, this is a preliminary RIA and

OSHA invites public comment concerning this estimate. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposal would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this certification.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

The proposed standard, however, has no changes that would require significant capital expenditures. Furthermore, as these proposed provisions are more performance-oriented than specification-oriented, small entities can use cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance with the proposed standard primarily depend upon the amount of work at elevations and upon the number of employees, both of which typically depend upon the size of the firm. There are, however, some economies of scale in compliance and the costs of compliance expressed as a percentage of total revenues would be slightly larger for very small firms (fewer than 50 employees) than for very large firms (greater than 1,000 employees). Nevertheless, these compliance costs would be a minimal component of the overall cost of the shipyard production. As a result, this proposed standard would not put small entities at a competitive disadvantage relative to large entities.

Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions

reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500 through 1517), and Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary of OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, and proper use and handling of equipment. The proposal also contains language, definition, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S-046, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 655) and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of

the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by February 27, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken or about which the hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. Currently five States (California, Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut¹, Hawaii, Indiana, Iowa,

¹ Plan covers only State and local government employees.

Kentucky, Maryland, Michigan, Nevada, New Mexico, New York, ¹ North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Guardrail systems, Marine safety, Occupational safety and health, Personal flotation devices, Personal fall protection equipment, Safety, Safety nets, Ship repair, Shipyard employment, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1915—[Amended]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers, Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. 29 CFR Part 1915 would be amended by adding a new Subpart M to read as follows:

Subpart M—Fall Protection

Sec.

1915.201 Scope, application, and definitions applicable to this subpart.

1915.202 Requirements to have fall protection.

1915.203 Fall protection systems criteria and practices.

Appendix A to Subpart M—Guardrail Systems.

Subpart M—Fall Protection

§ 1915.201 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart sets forth requirements for fall protection to be provided for and used by employees in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR Part 1926.

(2) The provisions of 29 CFR 1910.21, 1910.22(b), 1910.22(c), and 1910.23 do not apply to shipyard workplaces and operations.

(3) Section 1915.202 sets forth those shipyard workplaces, conditions, operations, and circumstances for which fall protection shall be provided and used, except as follows:

(i) Provisions requiring fall protection for employees on stairways and ladders are provided in §§ 1915.71 through 1915.90 of this part (Subpart E).

(ii) Provisions requiring fall protection for employees on scaffolds are provided in §§ 1915.251 through 1915.253 of this part (Subpart N).

(4) Section 1915.203 sets forth the requirements for the installation, construction, and use of guardrail systems, safety net systems, covers, and falling object protection required by the part. Criteria for personal fall arrest systems, positioning device systems, and personal flotation devices are provided in §§ 1915.151 through 1915.160 of this part (Subpart I).

(5) Facilities or equipment installed prior to 30 days after date of publication of the final rule in the Federal Register may comply with the requirements in brackets ([]) in this subpart in lieu of the corresponding unbracketed requirements.

(b) *Definitions applicable to this subpart.*

"Dangerous equipment" means equipment such as machinery, electrical equipment, and other units which, as a result of form or function, may be hazardous to employees who fall onto or into such equipment.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Guardrail system" means a vertical barrier, normally consisting of, but not limited to, an assembly of top rails,

midrails, and posts, erected to prevent employees from falling to lower levels.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, decks, flats, docks, floors, roofs, ramps, gangways, grates, piers, wharves, runways, excavations, pits, tanks, material, water, equipment, and other surfaces.

"Personal fall arrest system" means a combination of body belt or body harness, and lanyard, deceleration device, lifeline, and point of anchorage.

"Personal flotation device" means a life-jacket type vest used to provide flotation assistance.

"Positioning device system" means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall or ship's funnel, and to work with both hands free while leaning backwards.

"Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve safety problems relating to the subject matter, the work, or the project.

"Toeboard" means a low protective barrier to prevent the fall of materials and equipment to lower levels.

"U-guard" means a barrier shaped like an inverted "U" which is used at manhole openings on vessels to provide fall protection. These guards are also known as "hairpins," "fieldgoals," and "horseshoes."

"Unprotected sides and edges" means any side or edge (except at entrances to points of access) of a deck, platform, flat (or similar surface on a vessel), floor, roof, ramp, catwalk, or runway where there is no wall or guardrail system at least 39 inches (1.0m) [Grandfather provisions: 36 inches (0.9m); see § 1915.201(a)(3)] high.

"Vessel section" means a sub-assembly, module, or other component of a vessel being built, repaired, or broken.

"Walking/working surface" means any surface on which employees must be located in order to perform their job duties.

§ 1915.202 Requirements to have fall protection.

(a) *General.* (1) All fall protection shall be installed before employees begin any other work on or from the surface or area where fall protection is required.

(2) The provisions of this section do not apply to unprotected sides and edges of the top, waterside, walking/

working surface of wharves, piers, and quays, nor to the loading side of loading docks, nor to assembly tables, vehicles, or trailers.

(b) *Fall protection on vessels, vessel sections, and vessel means of access.* Employees on decks and other walking/working surfaces aboard vessels, vessel sections, and on vessel means of access shall be protected from fall hazards as follows:

(1) Employees working near flush manholes and other small openings of comparable size in the deck and other working surfaces shall be protected by the use of covers, guardrail systems, or U-guards, except where the use of such protection is made impracticable as a result of the nature of the work actually in progress.

(2) Employees working near open hatches not protected by coamings to a height of 24 inches (61 cm), and employees working near all other large openings shall be protected by the use of guardrail systems, except where the use of such guards is made impracticable as a result of the nature of the work actually in progress.

(3) Employees working near unprotected sides and edges of decks, platforms, flats, and similar flat surfaces more than five feet (1.5 m) above lower levels (except water) shall be protected by the use of guardrail systems, except where the use of such guards is made impracticable as a result of the nature of the work actually in progress.

(4) Employees working near unprotected sides and edges of decks, platforms, flats, and similar surfaces above water on vessels afloat shall be protected by personal flotation devices.

(5) Employees boarding, leaving, or working from small boats or floats shall be protected by personal flotation devices.

(6) Sections of bilges from which floor plates or gratings have been removed shall be guarded by guardrails, except where the use of such guards is made impracticable as a result of the nature of the work actually in progress. If these open sections are in a walkway, at least two 2 inch by 10 inch planks placed side by side, or equivalent, shall be laid across the opening to provide a walking surface.

(7) Gratings, walkways, and catwalks from which sections or ladders have been removed shall be barricaded with guardrails.

(8) When firebox floors present tripping hazards of exposed tubing or of missing or removed refractory, planking shall be laid to afford safe footing while work is being carried on within the boiler.

(9) Employees working near the edges of floating dry dock wing walls shall be protected by guardrail systems. Sections of the railings may be temporarily removed where necessary to permit line handling while a vessel is entering or leaving the dock.

(10) Employees working on the deck of a floating dry dock where they are exposed to the hazard of falling into the water shall be protected by the use of a guardrail system installed along the ends of the dry dock. When such a railing would be impracticable, employees shall use personal fall arrest systems or positioning device systems rigged to prevent employees from falling into the water.

(11) Employees on gangways and turntables used for vessel access shall be protected by guardrail systems.

(c) *Fall protection ashore.* Employees not on vessels, vessel sections, or vessel means of access shall be protected from fall hazards as follows:

(1) Except as provided in paragraphs (c)(2) through (c)(5) of this section below, employees on floors, roofs, ramps, walkways, graving dock edges, and other walking/working surfaces with unprotected sides and edges four feet (1.2 m) or more above lower levels, shall be protected by the use of guardrail systems. When the use of guardrail systems is impracticable, employees shall be protected by the use of personal fall arrest systems, positioning device systems, or safety net systems.

(2) In areas where guardrail systems or portions of guardrail systems have been removed to allow the passage of materials, tools, or equipment, employees shall be protected by the use of personal fall protection equipment.

(3) Employees less than four feet (1.2 m) above dangerous equipment shall be protected by guardrail systems or equipment guards.

(4) Employees four feet (1.2 m) or more above dangerous equipment shall be protected by guardrail systems, personal fall arrest systems, or safety net systems.

(5) Employees on floors, roofs, roadways, vehicular aisles, and other walking/working surfaces with holes (including skylights and open pits) into which employees can accidentally walk shall be protected by covers or guardrail systems, or the hole shall be guarded by an attendant.

(i) Covers used for protection shall be closed when the hole is not in use.

(ii) When the cover is open or removed, employees shall be protected by guardrail systems, or the hole shall be guarded by an attendant.

(6) Employees exposed to the hazard of falling into tanks, vats, and similar enclosures shall be protected by guardrail systems or covers.

(7) Employees working on, at, or near wall openings (including openings with chutes attached) shall be protected from falling through or into the wall opening by the use of a guardrail system, whenever the outside bottom edge of the wall opening is more than four feet (1.2 m) above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 m) [Grandfather provisions: 36 inches (0.9 m); see § 1915.201(a)(3)] above the walking/working surface.

(d) *Protection from falling objects.*

Except as provided for scaffolds in Subpart N, employees, in addition to wearing hardhats as required by § 1915.155 of this part, shall be protected by falling object protection as necessary when they are on or immediately adjacent to vessels or vessel sections. In addition, falling object protection shall be installed at all times at all other locations beneath which employees can pass, there is moving machinery, or there is equipment with which falling materials could create a hazard. Such protection shall consist of toeboards, screens, or guardrail systems erected to prevent objects from being displaced from higher levels; or by canopy structures erected to deflect the falling objects.

§ 1915.203 Fall protection systems criteria and practices.

(a) *Guardrail systems.* Guardrail systems installed and used to meet the requirements of this part shall comply with the following provisions:

(1) The top edge height of toprails or equivalent guardrail system members shall be as follows:

(i) Thirty inches (76 cm) to 45 inches (114 cm) for systems installed around flush manholes and other small openings of comparable size located in decks and other walking/working surfaces aboard vessels and vessel components, and for systems installed on gangways and turntables (with the height measured perpendicularly from the rail to the walking surface at the stanchion), and for systems installed on walkways and ramps used for vessel access.

(ii) Thirty-six inches (92 cm) to 45 inches (114 cm) for systems installed around open hatches not protected by coamings to a height of 24 inches (61 cm), and for systems installed around other large openings aboard vessels and vessel components.

(iii) Thirty-nine inches (99 cm) [Grandfather provisions: 36 inches (92

cm); see § 1915.201(a)(3)] to 45 inches (114 cm) for systems installed on drydocks, edges of graving docks, and around all other fall hazard areas.

(2) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members shall be installed between the top edge of the guardrail system and the walking/working surface where there is no wall or parapet wall at least 21 inches (53 cm) high.

(i) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the top of the walking/working surface where there is no wall or parapet wall at least 21 inches (53 cm) high.

(ii) Screens and mesh, when used, shall extend from the top rail to the walking/working surface, and along the entire opening between top rail supports.

(iii) Intermediate vertical members (such as balusters), when used between posts, shall be not more than 19 inches (.48 m) apart.

(iv) Other structural members shall be installed such that there are no openings in the guardrail system that are more than 19 inches (.48 m) wide.

(3) Guardrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 N) applied within two inches (5.1 cm) of the top edge, in any outward or downward direction, at any point along the top edge.

(4) When the 200 pound (890 N) test load specified in paragraph (a)(3) is applied in a downward direction, the top edge of the guardrail system shall not deflect to a height less than the minimum heights specified in paragraph (a)(1) above.

(5) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force of at least 150 pounds (666 N) applied in any downward or outward direction at any point along the midrail or other member. Guardrail systems on gangways on vessels inspected and certified by the U.S. Coast Guard will be deemed to meet the requirements of paragraphs (a)(3) through (a)(5) of this section, except in cases where the vessel's regular gangway is not being used.

(6) Guardrail systems shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(7) The ends of all top rails and midrails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(8) Steel banding and plastic banding shall not be used as top rails or midrails.

(9) Top rails and midrails shall be at least one-quarter inch (0.6 cm) nominal diameter or thickness.

(10) When guardrail systems are exposed to hot work (i.e., welding, burning, or other heat producing operations) or corrosive chemicals, manila or synthetic fiber rope rails shall not be used.

(11) When guardrail systems are used at materials, tools, or equipment handling areas, a chain, gate or removable guardrail section shall be placed across all access openings between guardrail sections when handling operations are not taking place.

(12) When guardrail systems are used at holes or openings in walking/working surfaces, they shall be erected on all unprotected sides and edges of the hole or opening.

(13) When guardrail systems are used around holes or openings used for the passage of materials, the hole or opening may have not more than two sides provided with removable guardrail sections to allow the passage of materials.

(14) When guardrail systems are used around holes or openings which are used as personnel points of access (such as ladderways), they shall be provided with a gate or be so offset that a person cannot walk directly into the hole.

(15) Guardrail systems on ramps and runways shall be erected along each unprotected side or edge; however, when operating conditions preclude installation of a guardrail system along both sides, the guardrail system may be omitted along one side if the ramp or runway is at least 18 inches (.5 m) wide.

(b) *Safety net systems.* Safety net systems installed and used to meet the requirements of this Part shall comply with the following provisions:

(1) Safety nets shall extend outward at least 15 feet (4.6 m) from the outermost projection of the work surface.

(2) Safety nets shall be installed as close as practicable under the walking/working surface on which employees are working, but in no case more than 25 feet (7.7 m) below such level.

(3) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structure below when subjected to an impact force equal to the drop test specified in paragraph (b)(4) of this section.

(4) Safety nets and their installations shall be capable of absorbing without failure an impact force equal to that

produced by the drop test specified in paragraph (b)(4)(i) of this section.

(i) Safety nets and safety net installations shall be drop-tested at the jobsite before being used as a fall protection system. The drop-test shall consist of a 400 pound (180 kg) bag of sand 30 ± 2 inches (76 ± 5 cm) in diameter dropped into the net from the highest walking/working surface on which employees are to be protected.

(ii) *EXCEPTION:* When the employer can demonstrate that a drop-test is not practicable, the net and net installation shall be certified by a qualified person to be in compliance with the provisions of paragraphs (b)(3) and (b)(4)(i) of this section.

(5) Safety nets shall be inspected weekly for mildew, wear, damage, and other deterioration, and defective components shall be removed from service.

(6) Materials, scrap pieces, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(7) The maximum size of each safety net mesh opening shall not exceed 36 square inches (225 cm^2) nor be longer than six inches (15 cm) on any side measured center-to-center of mesh ropes or webbing. All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(8) Each safety net (or section of it) shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(9) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than six inches (15 cm) apart.

(c) *Covers.* Covers for holes in floors, roofs (including skylights), roadways, vehicular aisles, and other walking/working surfaces which are not on vessels, vessel sections, or vessel means of access, shall comply with the following provisions:

(1) Covers located in roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the hole [Grandfather provisions: 20,000 pounds (9,120 kg); See § 1915.201(a)(3)].

(2) All other covers shall be capable of supporting, without failure, the maximum total anticipated load of employees, equipment, and materials to be applied to the cover at any one time, or 250 pounds (114 kg), whichever is greater [Grandfather provisions: 200 pounds (91 kg); See § 1915.201(a)(3)].

(3) All covers shall be installed so as to prevent accidental displacement.

(4) Covers over steam pits shall not be made of plywood.

(d) *Protection from falling objects.* Falling object protection installed and used to meet the requirements of this Part shall comply with the following provisions:

(1) Toeboards, when used as falling object protection, shall be erected along the edge of the overhead walking/working surface for a distance sufficient to protect employees using the point of access below.

(2) Toeboards shall be capable of withstanding, without failure, a force of at least 50 pounds (222 N) applied in any downward or outward direction at any point along the toeboard.

(3) Toeboards shall be a minimum of three and one-half inches (8.9 cm) in height measured vertically from their top edge to the level of the walking/working surface. They shall have not more than one-half inch (1.3 cm) clearance above the walking/working surface. They shall be solid or have openings not over one inch (2.5 cm) in greatest dimension.

(4) Where tools, equipment, or materials are piled higher than the top edge of a toeboard, paneling or screening shall be erected from the walking/working surface or toeboard to the top of a guardrail system's toprail or midrail, for a distance sufficient to protect the employees using the point of access below.

(5) Guardrail systems, when used as falling object protection, shall have all openings small enough to reject passage of potential falling objects.

Appendix A to Subpart M—Guardrail Systems

The standard requires guardrail systems and components to be designed and built to meet certain requirements including § 1915.203 (a)(3), (a)(4), (a)(5), and (d)(2). This appendix serves as a non-mandatory guideline to assist employers in complying with these requirements. An employer may use these guidelines as a starting point for designing guardrail and toeboard systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the capacity and strength requirements of the standard. Components for which no specific guidelines are given in this appendix (e.g., joints, base connections, components made with other materials, and components with other dimensions) must also be designed and constructed in such a way that the completed system meets the capacity and strength requirements of § 1915.203.

(1) For wood components: Wood components shall be minimum 1,500 lb-ft/in² fiber (stress grade) construction grade lumber; the posts shall be at least two-inch by four-inch lumber spaced not more than

eight feet apart on centers; the toprail shall be at least two-inch by four-inch lumber, the intermediate rail shall be at least two-inch by four-inch lumber; the toeboard shall be at least one-inch by four-inch lumber. All lumber dimensions are nominal sizes as provided by the American Softwood Lumber Standards, dated January 1970.

(2) For pipe railings: posts, toprails, and intermediate railings shall be at least one and one-half inches nominal diameter with posts spaced not more than eight feet apart on centers.

(3) For structural steel railings: posts, toprails, and intermediate rails shall be at least two-inch by two-inch by three-eighths-inch angles, with posts spaced not more than eight feet apart on centers.

[FR Doc. 88-27002 Filed 11-28-88; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1915

[Docket No. S-047]

Safety Standards for Scaffolds Used in Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the shipyard employment safety standards addressing scaffolds. The standards proposed for revision regulate the design, construction, and use of scaffolds in shipyards.

The existing shipyard employment standards (29 CFR Part 1915) apply to shipbuilding, ship repairing, and shipbreaking operations and related employments. However, the present standards in Part 1915 are not comprehensive in their coverage of shipyard hazards, and are supplemented by the general industry standards (29 CFR Part 1910) as necessary to provide complete coverage for all the hazards encountered in shipyards. This document is one of a series of proposals which are intended to revise Part 1915 to provide comprehensive coverage of shipyard employment solely within that part.

This action will consolidate and update the shipyard employment scaffold standards and the appropriate general industry scaffold standards into a single, comprehensive Part 1915 that would apply to all activities and areas in shipyards (except construction activities covered by Part 1926). The proposed provisions will delete many existing specification provisions which currently limit employer innovation, and where appropriate, use performance-

oriented provisions to address scaffold hazards.

The specific topic of scaffolds is currently addressed in Subpart E of the current Shipyard Employment Standards, along with the topics of access and egress, ladders, and other walking/working surface considerations. To format the rules into a more logical grouping of topics, this and related actions would retain coverage of ladders and other access and egress concerns in Subpart E, and would relocate fall protection and scaffolds from the current Subpart E to a new Subpart M—Fall Protection, and a new Subpart N—Scaffolds.

DATES: Comments on this proposed rulemaking must be postmarked by February 27, 1989. Hearing requests must be postmarked by February 27, 1989.

ADDRESS: Written comments and requests for a hearing should be sent in quadruplicate to the Docket Office, Docket No. S-047, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Materials in the rulemaking record are available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The principal author of this notice of proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background and Approach

In May 1971, the Occupational Safety and Health Administration under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted established Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR Part 1915), shipbuilding (29 CFR Part 1916), and shipbreaking (29 CFR Part 1917) operations. In addition, OSHA adopted other Federal standards and national consensus standards as general industry standards (29 CFR Part 1910) and construction industry standards (29 CFR Part 1926) which were made applicable

to hazards and working conditions not specifically covered by Parts 1915, 1910, or 1917. On April 20, 1982, the ship repairing, shipbuilding, and shipbreaking standards were consolidated into one Part 1915 of Title 29, Code of Federal Regulations, and titled "Occupational Safety and Health Standards for Shipyard Employment" (47 FR 16984). The consolidation eliminated duplicate provisions and overlapping provisions, but did not alter any substantive requirements. The consolidation did not affect the applicability of general industry standards of 29 CFR Part 1910 to hazards or conditions in shipyard employments not specifically addressed in the consolidated Part 1915 (see 29 CFR 1910.5(c)(2)).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested OSHA to identify the specific applicable provisions of the general industry standards which apply to shipyards, and consolidate them with the existing Part 1915 provisions into a single set of shipyard employment standards. OSHA has determined that such consolidation is appropriate. This and other proposed rulemakings will eventually incorporate all applicable Part 1910 provisions into the existing organization of Part 1915. The present Part 1915 organizational format, which is already familiar to present users of the shipyard standards, provides a logical grouping of related provisions based on the type of work activity, hazard, or equipment involved. However, when a regrouping of topics would facilitate understanding of the rules, or when applicable Part 1910 provisions have no counterpart in the existing Part 1915 structure, the proposals would create new subparts or subpart headings in Part 1915.

In addition to consolidating the provisions of Part 1910 and Part 1915, OSHA proposes to revise the consolidated provisions as appropriate. OSHA has not substantively revised many of the current provisions in these Parts since they were promulgated in 1971. OSHA believes some provisions need to be revised to reflect technological advances. Other provisions need to be revised because they are based on national consensus standards issued prior to 1971, and do not reflect the revisions made since that time. As the provisions are consolidated, all such revised consensus standards will be reviewed, and OSHA's provisions revised as necessary to effectuate the purposes of the standard and the OSH Act. Where practical, all current incorporations by reference of

national consensus standards and other materials will be deleted by the proposed standards, and the text of all such requirements will be proposed for inclusion in the body of the proposed standards, or their appendices. This approach is intended to assist employers in determining what duties and obligations are imposed by a provision by minimizing the need to refer to documents outside Part 1915. OSHA will also use the consolidation project to replace specification requirements with performance-oriented requirements where it is known that there is more than one way to provide safety equivalent to that provided by the present specification requirements. Specification requirements would be used only where necessary to set appropriate limits and to clarify duties and obligations.

The revision of the shipyard employment standards will be coordinated with efforts to revise parallel provisions in the construction and general industry standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

II. Summary and Explanation of the Proposal

Scaffolds are currently covered by 29 CFR Part 1915, Subpart E—Scaffolds, Ladders, and Other Working Surfaces, and 29 CFR Part 1910, Subpart D—Walking-Working Surfaces. Consolidation of these two subparts into one subpart would result in a large, cumbersome subpart, because of the wide range of topics covered. Therefore, OSHA is proposing to divide the consolidated Part 1915 standards into three subparts. The proposed sub-parts would be Subpart E—Access and Egress; Subpart M—Fall Protection; and Subpart N—Scaffolds. This reformatting, in and of itself, would neither create nor delete any requirements.

In accordance with paragraph 6(b)(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), the agency has reviewed the various national consensus standards that cover working conditions dealt with in this proposal. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive and provides greater flexibility in its requirements for safety. The following discussion provides a more detailed

explanation of the proposed provisions related to scaffolds.

Section 1915.251 Scope, application and definitions applicable to this subpart.

Proposed § 1915.251(a) outlines the scope and application of Subpart N. The proposal would apply to all scaffolds used in all workplaces and operations found in shipyards, including those aboard vessels and vessel sections (sub-assemblies of vessels), except that construction, alteration, repair (including painting and decorating), and demolition of shore facilities would continue to be addressed by 29 CFR Part 1926—Construction Industry Standards. This proposal incorporates all applicable provisions of 29 CFR 1910.28 and 1910.29 related to scaffolds, and those sections of Part 1910 would no longer apply to shipyard workplaces and operations.

The term "scaffold" is defined to mean any temporary elevated platform (supported or suspended) and its supporting structure used for supporting employees or materials, or both. Included under this definition are crane and derrick suspended personnel platforms. The intent is to cover the hazards associated with scaffold work regardless of the style, purpose, or name of the scaffold. For the purposes of this Subpart, scaffolds are divided into two categories: "supported scaffolds" and "suspension scaffolds." The standards in Subpart N are all intended to apply to both types of scaffolds, except where a provision is expressly limited to either suspension or supported scaffolds. Scaffolds which have a combination of supported and suspended components would be covered by both sets of provisions.

Proposed paragraph (b) of § 1915.251 lists and defines all major words used in Subpart N. Many of the definitions are the same as those in the existing standards, however some have been reworded for uniformity or clarity. One significant change made to all definitions defining the types of scaffolds is the inclusion of the words "supported scaffold" and "suspension scaffold," as appropriate. This change would clarify the application of the general rules contained in § 1915.252, some of which only apply to supported types of scaffolds and some of which only apply to suspension types of scaffolds. Another significant change involves language in the existing definitions which goes beyond defining the term in question, and imposes substantive limitations or obligations on equipment use. Such language is more

appropriately located in the substantive parts of the standards and not in the definitions. The proposal would remove such provisions from the definitions and relocate them elsewhere in the standards. For example, the existing definition from Subpart D for "horse scaffolds" is "a scaffold for light or medium duty, composed of horses supporting a work platform." The words "for light or medium duty" are proposed to be deleted from the definition because they have a substantive limitation on the use of the scaffold, rather than serving to define the type of scaffold. Similarly, the existing definition from Subpart D for "coupler" is "a device for locking together the component parts of a tubular metal scaffold. The material used for the coupler shall be of a structural type, such as a drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited." Only the first sentence of that definition describes what is meant by a "coupler." By contrast, the second and third sentences impose substantive requirements on how a coupler must be constructed. Provisions such as these, which are substantive rather than definitional, are more appropriately located in the substantive provisions of the standard.

The following are the major terms which would be changed or added to the definitions in the proposed standard:

"Adjustable suspension scaffold." This is a new definition and is used in the proposal to clarify which types of suspension scaffolds are adjustable. As all types of suspended scaffolds can be erected at various heights, they might all be thought of as "adjustable." However, the proposed definition explains that the term "adjustable suspension scaffold" applies only to those types of scaffolds with hoists which can be operated by employees on the scaffold. Hoists are defined as mechanical devices used to raise or lower a suspended scaffold.

"Body belt/harness system (personal fall arrest system)." This term replaces the existing term "safety belt" to reflect current industry use of the new terms "body belt system" and "body harness system" (also known as "personal fall arrest systems").

"Capable person." This term is used to define the necessary competencies and to be possessed by individuals assigned to perform specified tasks required by the proposed subpart. (See also the definition for "qualified person.") Although not defined, Part 1910 presently uses the term "competent person" to qualify the type of individual responsible for performing certain specified duties. Part 1915 also uses the

term "competent person" to describe certain individuals, and the term is defined in § 1915.4(o). The existing Part 1915 definition is for unique shipyard situations and is not a suitable definition to use for the Part 1910 term when Part 1910 provisions are combined with Part 1915 provisions. Therefore, where Part 1910 provisions are included in this proposal, the term "competent person" is replaced by the term "capable person". The proposed definition is based on the existing definition for "competent person" used in the construction safety standards (29 CFR 1926.32(f)).

"Catenary scaffold." This type of scaffold is not specifically addressed in the existing rules, however it is covered in proposed paragraph § 1915.253(n). The definition is essentially the same definition as is currently used by the American National Standards Institute in ANSI A 10.8-1977. (Ref. 1)

"Cleat." The existing definition in Subpart D applies only to ladders. The proposed definition defines this word as it applies to scaffolds, i.e., a structural member used to prevent plank slippage, and to provide footing on sloped surfaces such as crawling boards.

"Dropline." This is a piece of equipment used for body belt/harness support in fall protection systems. It is not used to support scaffolds.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definitions make clear that the employer must demonstrate that the alternative means of compliance will provide an equal or greater degree of safety than that attained by using the methods or item specified in the standard.

"Exposed power lines." This term is defined to mean electrical power lines which are accessible and not shielded, and is used in paragraph § 1915.252(d)(6), which limits the use of scaffolds near exposed power lines. The definition excludes extension cords and power tool cords from that rule.

"Fabricated decking and planking." The existing standard only addresses solid sawn wood planking in many of its provisions. Since the market presently offers laminated platforms, metal and non-metal decking, as well as solid sawn wood planking, the standard has been drafted to include these fabricated items, and to sanction their use officially. The definition makes clear that both fabricated and natural products are addressed.

"Fabricated frame scaffold." This is the proposed name for the type of scaffold presently identified as "tubular welded frame scaffold." The current

term is too restrictive in that the word "tubular" means round, and "welded" implies that metal components are involved. The rules in paragraph § 1915.253(c) are not dependent on such limitations. They address fabricated frames and related scaffold components whether the component parts are square or round, and whether made of metal, plastic, wood, or some other material.

"Failure." This word is used in performance-oriented paragraphs such as § 1915.252(a)(1) and 1915.252(a)(3) which address the capacities of scaffolds and scaffold components. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the load point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Guardrail system." This term defines guardrails as vertical barriers erected to prevent employees from falling, and replaces the existing term "guardrail." The definition is changed because the existing Part 1910 definition describes a toprail, a midrail, and a stairrail. However, this is not appropriate as each of these rails has different performance criteria. The new definition makes it clear that the entire system, including toprail, midrail (or screen) and posts, is covered when guardrails are addressed in paragraph (e) of § 1915.252. In addition, the definition distinguishes between Type I guardrails—those capable of providing adequate fall protection by themselves, and Type II guardrail systems—those which may be used on suspended platforms as edge delineators and to prevent misstepping, but which do not provide adequate fall protection by themselves. Body belt/harness systems must be worn when Type II guardrails are used on suspension scaffolds because of the reduced strength characteristics and lower toprail heights of Type II systems.

"Hoist." This definition clarifies that paragraphs relating to hoists, including paragraphs (b) (28), (29) and (30) of § 1915.252, apply only to mechanisms used to elevate or lower suspension scaffolds, and do not apply to other types of material hoists.

"Ladder stand." This is a term used in § 1915.252(c) and defines one kind of means-of-access which can be used with scaffolds.

"Lean-to-scaffolds." This is a type of scaffold which gains its support and stability by leaning into or against the object being worked on.

"Lower levels." This term is used to describe the areas to which an employee

could fall. The definition does not apply to the surface from which the employee could fall.

"Mechanically-powered hoists." This is a new term and would define hoists which are powered by other than human energy.

"Mobile scaffold." This proposed term replaces the existing term "manually-propelled mobile scaffold" because there are power drive units available to propel scaffolds, and the proposed standard addresses both manual and power drive systems.

"Multi-level suspended scaffold." The existing standard does not specifically address suspended scaffolds with more than one platform level. This term in the proposed standard identifies such scaffold arrangements.

"Open sides and ends." This proposed definition clarifies the application of paragraph (e)(1) of § 1915.252, which requires fall protection, by defining the hazard for which guarding would be required. In brief, a side or end is considered to be "open" if it is more than 14 inches from a horizontal or vertical surface or a point of access. The 14-inch dimension in the definition is consistent with the provisions of proposed paragraphs (b)(4) and (c)(7) of § 1915.252.

"Outrigger." This term, "outrigger beam," and "outrigger scaffold" are new definitions provided to explain the difference between these three similar terms.

"Platform." This term is used to refer to the horizontal work surface of a scaffold, regardless of its completion. The existing standard uses terms such as "planking" and "planks," and consequently is ambiguous as to the use of other types of platforms such as decks or other fabricated materials or units.

"Platform unit." The existing standard uses the term "planks" in many of its provisions. This term commonly means "solid sawn wood." However, some manufacturers of fabricated planks use the term "planks" to describe their product. Furthermore, there are other types of structural members and materials which can be used to build platforms and walkways. Therefore, the term "platform unit" is needed to clarify that the standards apply to all types of platforms and walkways, not just those made of solid sawn wood.

"Qualified person." This term is used to describe the necessary competencies to be possessed by individuals assigned to perform specified tasks required by this proposal. (See also the definition for "capable person.") This term is not defined in Subpart D. The proposed

definition is, therefore, based on the existing definition used in the construction safety standards (29 CFR 1926.32(1)).

"Self-contained adjustable scaffolds." This type of scaffold, not specifically addressed in the existing standard, is an adjustable suspension scaffold equipped with its own support frame and movable platform. It is, therefore, covered by the general rules for both supported scaffolds and suspended scaffolds.

"Step, platform, and trestle ladder scaffolds." This is the proposed name for the type of scaffold presently identified as "wood trestle, and extension trestle ladders." This change mirrors ANSI's use of the new term.

"Supported scaffold" and "Suspension scaffold." These terms are used to define the two basic types of scaffolds. As discussed above, these terms clarify the application of the general rules in § 1915.252.

"Unstable objects." This term is used to describe those items which shall not be used as scaffold base supports because they do not properly distribute the loads imposed on them. Such supports can break or become dislodged. Examples of such objects include barrels, boxes, bricks, blocks, and similar items. This list is essentially the same as the one set forth in § 1910.28(a)(2).

"Vertical pickup." This term defines the structural member addressed in § 1915.253(n)(1).

"Walkway." This term is used to describe platforms within a scaffold which are used for access and not as work platforms.

Section 1915.252 General requirements

This section applies to all scaffolds, and contains most of the new rules and changed provisions. To facilitate locating a particular rule, the rules in this section have been grouped into five major subsections: capacity, construction, access, use, and fall protection.

For purposes of clarification, those rules which apply only to certain types of scaffolds are so identified. For example, general rule (b)(14) of § 1915.252 would only apply to supported scaffolds, and the term "supported scaffold" is used to indicate this. Similarly, general rule (b)(27) of § 1915.252 would only apply to suspension scaffolds. If a rule makes no distinction, such as general rule (b)(1) of § 1915.252, then it would apply to all scaffolds.

Paragraph 1915.252(a)—Capacity. This proposed paragraph would set forth the minimum strength criteria for all

scaffold components and connections. The proposed requirements are substantively the same as existing capacity provisions; however, the proposed language eliminates ambiguities and apparent inconsistencies.

Paragraph (a)(1) of § 1915.252 would require each scaffold component, except suspension ropes and guardrails, to be capable of supporting without failure its own weight and at least four times the maximum intended load applied or transmitted to that component. This is essentially the same requirement as § 1910.28(a)(4), which requires that scaffolds and scaffold components "Be capable of supporting without failure at least four times the maximum intended load," and § 1915.71(b)(1) which requires scaffolds and scaffold components to "be capable of supporting the load they are designed to carry with a safety factor of four." However, as written, the existing requirements are inconsistent with § 1910.28(a)(22), which requires a safety factor of six for suspension ropes, and are ambiguous as to their application to §§ 1910.28(a)(9) and 1915.71(j), which govern guardrails. The proposed standard makes clear that the four to one safety factor does not apply to suspension ropes or guardrails.

The proposed paragraph also makes it clear that the four to one factor applies to the load which is actually applied or transmitted to a component, and not to the total load placed on the scaffold. This is the same requirement as § 1915.71(b)(1), but is a change from § 1910.28(a)(4). As currently worded, § 1910.28(a)(4) requires that each component, regardless of its location, configuration, or the number of other components supporting the same load, be designed to support four times the maximum intended load (MIL). Literally interpreted, this could be read to require that a crossbrace on a supported scaffold be capable of supporting the same load as a scaffold leg. That is, it must be sized to support four times the MIL regardless of where the load is placed on the scaffold, and regardless that the function of a brace is to prevent sway and not directly to support the MIL. The amount of MIL applied or transmitted to each component depends on its location on the scaffold, and the type and configuration of the scaffold system. On complicated systems, the services of an engineer may be required to determine the loads at a particular point. However, because some employers do not have an engineering staff, and because some employers prefer to have a quick reference table from which a scaffold can be readily

built (even if over-designed), the non-mandatory tables and guidelines in Appendix A are provided and may be used as a starting point for designing scaffold systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling the components in such a way that the completed system will meet the requirements of § 1915.252(a)(1). The tables and guidelines are the same as are presently provided throughout existing Subparts D and E. However, whereas the existing standards require the use of these tables and guidelines, the proposed standard does not require them. What would be required is that the scaffold meet the performance criteria set forth in § 1915.252(a)(1). This allows design flexibility to employers who desire to engineer their scaffold set-up, while also providing a partial solution for employers who either do not desire to or cannot engineer the systems that are to be used.

The tables in existing Subpart D (Tables D-7 through D-19), and Subpart E (Tables E-1, E-3 and E-4) provide detailed specifications for components used in scaffold construction. However, OSHA believes that the important consideration in scaffold design and construction is that the scaffold support the MIL safely, with an adequate margin of safety, and not that the scaffold have a particular sized upright regardless of MIL size and placement pattern. Consequently, the proposal would relocate all scaffold related tables currently in §§ 1910.28 and 1915.118, including the table in § 1910.28(a)(9) governing maximum span distance, to Appendix A, and would not make the tables mandatory. Similarly, existing paragraphs such as § 1910.28(a)(8), which specifies minimum grade stress for lumber used; § 1910.28(c)(1), (2), (3) and (4), which specify tube size and maximum tube and coupler scaffold heights; and § 1915.71(f)(11)(iii)-(iv), which specify minimum component sizes for ladder type suspension scaffolds, also would be relocated to Appendix A. The relocation of existing tables and specification language does not reduce the level of safety presently provided by the existing requirements. OSHA believes the proposed capacity requirements of paragraph § 1915.252(a) provide the same level of safety as the existing standard. The existing specification tables and paragraphs are engineered partial ways of complying with the provision which requires a four to one factor of safety. Relocating these

tables and paragraphs to Appendix A will retain these criteria as examples of acceptable partial solutions, and will eliminate the interpretation that these specified provisions are the only acceptable ways of building a particular type scaffold.

Paragraph (a)(2) of § 1915.252 would clarify that the factor of safety of four to one also applies to direct connections to floors, roofs, hulls, and decks, and to counterweight systems.

Paragraph (a)(3) of § 1915.252 would require that suspension ropes be capable of supporting six times the MIL, and is essentially the same as § 1910.28(a)(22). In addition, paragraph (a)(4)(i) would require rope to be sized so that sufficient rope surface area is available for the proper functioning of brake and hoist mechanisms used on suspension scaffolds. Paragraph (a)(4)(ii) would specify minimum rope strength for catenary scaffolds and is based on ANSI A10.8-1977, paragraph 22.2. Paragraph (a)(4)(iii), which specifies minimum rope strength for float and needle beam scaffolds, is the same as paragraphs (n)(2) and (u)(5) of § 1910.28.

Paragraph 1915.252(b)—Construction. Proposed paragraph (b)(1) of § 1915.252 would require all platforms, except walkways, to be fully decked or planked. Paragraph (b)(1) would clarify the provisions of § 1910.28(a)(3), which requires guardrails on all open sides and ends of scaffolds, and § 1915.71(j)(1), which is unclear as to where guardrails are required. OSHA has interpreted these existing provisions to mean that guardrails must be erected as close as possible to the edge of the platform planking. As guardrails normally can be conveniently attached only at the scaffold uprights, OSHA to date has required the platforms to be sized such that there is no gap between the outermost plank edge and the guardrail. However, most prefabricated end frames do not have a lateral spacing between uprights which can accommodate an integral number of standard-sized-commercially-available planks. Therefore, to comply with the existing rule, the last plank has to be cut to size, notched, or slanted. These modifications can lead to a significant reduction in plank strength, possibly cause tipping of the plank (sideways) when it is stepped on, or pose a tripping or stepping hazard. Therefore, to address this problem, the proposed rule would modify the existing requirement by requiring the span between uprights to be planked or decked as fully as possible, but would allow up to nine and one-half inches between the planking or decking and the guardrail supports. Nine

and one-half inches would be the maximum allowable open space, as spaces larger than this can be filled with a standard sized platform unit (defined as individual wood planks, fabricated planks, fabricated decks, and fabricated platforms) without modification. The proposed rule also recognizes that some side warpage (as opposed to twist warpage) may occur to individual planks, and § 1915.252(b)(1)(i) would allow a maximum one-inch gap between platform units. When side brackets are used to extend the width of a platform, a gap would be permitted in the platform to accommodate the presence of the scaffold uprights.

Paragraph (b)(2) of § 1915.252 would specify a minimum width of 18 inches for all platforms, except platforms used on ladderjacks and boatswain's chairs. This would not require each platform unit to be at least 18 inches wide. Rather, it would require only that the entire platform, which is made up of one or more platform units, be at least 18 inches wide. OSHA believes 18 inches is the minimum safe width for scaffolds; however, the provision would allow ladderjack scaffold platforms to be as narrow as 12 inches wide. The smaller size for ladderjack scaffolds would be made because the difficulty of handling one 18-inch wide plank or two nine-inch planks on a ladder is considered by OSHA to be more hazardous than working on one 12-inch wide platform. However, because the narrowness of the 12-inch platform could cause an employee to misstep, the proposal would require body belt/harness systems to be used on ladderjacks, whereas the existing standard requires no fall protection. The existing requirement specifying a minimum size for boatswain's chair seats is proposed to be deleted as many chairs use slings or molded seats, and such a requirement is too restrictive.

Paragraph (b)(3) of § 1915.252 would prohibit the use of emergency descent devices as working platforms. These devices are not designed for repeated in-place use. However, this provision is not intended to preclude the use of scaffold systems which have as an additional feature the capacity to function as an emergency descent device.

Paragraph (b)(4) of § 1915.252 would limit to 14 inches the distance that a platform may be away from the face of the structure being worked on, unless Type I guardrails or body belt/harness systems are used. (An exception to the 14-inch limit is made for outrigger scaffolds, which are limited to a distance of three inches, the same as required by § 1910.28(e)(4)). The existing

rule, § 1910.28(a)(3), requires guardrails on all open sides and ends of a scaffold platform, but does not specify how far away a scaffold platform may be from a structure before the side facing the structure is considered to be an "open side." The existing rule has often been interpreted to mean that no open space is allowed. However, zero clearance is not always practicable. The proposed 14-inch limit is based on a study by Wang (Ref. 2), and is similar to provisions being developed for the construction and general industry standards. The distance from frame to wall may be any distance as long as the platform to wall space is no more than 14 inches. This can be done easily with the use of side brackets or extensions on supported scaffolds, and by angulated roping, static lines, or equivalent means on suspension scaffolds.

Paragraph (b)(5) of § 1915.252 would require platform units to extend a minimum of six inches beyond each end support so that they do not slip off their end supports when under load. This is the same as § 1910.28(a)(13) and § 1915.71(i)(3). However, cleats would be allowed in lieu of a six-inch overhang because of their ability to prevent platform units from slipping off the end supports.

Paragraph (b)(6) of § 1915.252 would change the maximum overhang allowed by § 1915.71(i)(3) from 12 inches to 18 inches, the same as allowed by § 1910.28(a)(13). This modification is made because many planks in use are 10 feet long and are used to span eight-foot distances. The existing rule requires these planks to be perfectly centered. This is an unnecessary requirement because the minimum overhang required is only six inches. In addition, because the proposed 18-inch limit, strictly interpreted, would require platform units to be cut if they extend more than 18 inches past their end supports, the rule provides that the overhang may exceed 18 inches if the extended portion is designed, capable, and installed to support employees without tipping, or is guarded to prevent employee access. This modification is consistent with the intent of § 1915.71(i)(3), which also allows additional platform overhang.

Paragraph (b)(7) of § 1915.252 would require proper support for abutting platform units. This provision is based on § 1910.28(b)(12), which applies only to wood pole scaffolds. However, OSHA believes that proper platform support is necessary for all scaffolds, and, therefore, the proposal would apply to all scaffolds. Abutted platform units do not rest one on another, but instead are end-to-end. Consequently, one unit does

not support the other, and proper support can only be provided by separate bearers, butt plates, or equivalent supports specifically designed to support the ends of abutted units.

Paragraph (b)(8) of § 1915.252 would require overlapped platforms to be overlapped a minimum of 12 inches. This would be the same requirement as § 1910.28(a)(11), except the proposed rule also requires overlaps to occur over supports and not between supports.

Paragraph (b)(9) of § 1915.252 is taken from § 1910.28(b)(13) for wood pole scaffolds, and prescribes the proper placement of platform units for maximum safety at corners or other changes in scaffold direction. OSHA proposes that this is a valid consideration for all scaffolds, and not just wood pole scaffolds.

Paragraph (b)(10) of § 1915.252 is proposed to assure that structural defects in platform units are not covered from view by the use of an opaque coating or finish. Hairline cracks can significantly reduce the strength of a wood member and their early detection is important. Opaque finishes can cover such cracks and make them difficult to discover. Unit edges are excepted from this rule to allow identification marks, grading marks, or other similar type of marks to be placed on the unit edges, and special coatings to minimize contamination may be placed on platform units used in reactor plants.

Paragraph (b)(11) of § 1915.252, prohibiting random combinations of scaffold components, is proposed because of the many inferior scaffold systems which can result when the products of two different manufacturers are indiscriminately assembled together. Many such combinations result in scaffolds which are not in alignment or are not plumb, and which, therefore, do not properly carry or distribute the loads imposed on the scaffolds. However, some units can be intermixed with no problem and the proposed language, therefore, does not prohibit all such combinations. However, the parts must fit together without force, and if parts are modified in order to intermix them, a capable person must determine that the resulting scaffold is structurally sound (no makeshift connections to facilitate the mixing of mismatched pieces).

Paragraph (b)(12) of § 1915.252 would prohibit the use of scaffold components made of dissimilar metals unless a capable person has determined that the resulting galvanic action will not significantly reduce any component's strength. This is a new rule, and is based on a similar rule developed for the

construction industry. Scaffolds which remain erected for long periods of time, such as during the construction or repair of a large vessel, are subject to corrosion caused by dissimilar metals used in various scaffold components. This condition can be aggravated in the sea air conditions of shipyards. The proposed rule would not prohibit all uses of dissimilar metals as there are many combinations which do not produce significant galvanic reactions.

Paragraph (b)(13) of § 1915.252 would require the stabilization of all supported scaffolds when their height to base width (including outriggers, if any) ratio exceeds four to one. This rule is taken from § 1910.29(a)(3) which applies only to manually-propelled mobile scaffolds. However, the danger of a scaffold toppling because its center-of-gravity is too high is a problem with all supported scaffolds. Therefore, OSHA believes that the four to one ratio should apply to all supported scaffolds. Paragraph (b)(13)(i) would require ties, guys, or bracing at heights not to exceed the first multiple in height of the four to one ratio, and at 20-foot maximum intervals thereafter above the first tie, guy or brace. The following are examples of how this rule would be applied: (a) If a scaffold is five feet wide and 18 feet high, no ties, guys, or braces would be required because the height is less than four times the width; (b) if the scaffold is five feet wide and 60 feet high, ties, guys, or braces would be required at least at the 20-, 40- and 60-foot levels; and (c) if the scaffold is five feet wide, 60 feet high, and the contractor ties, guys, or braces the scaffold at the 10-foot level, then ties, guys or braces also would be required at least at the 30- and 50-foot levels, and no ties, guys, or braces would be required at the very top since the 60-foot level is only 10 feet above the last intermediate level tie, guy or brace (at 50 feet).

Paragraph (b)(13)(ii) of § 1915.252 which specifies the horizontal spacing for ties, guys, and braces, is based on §§ 1910.28 (b)(4), (c)(13), and (d)(9). The existing rules require pole scaffolds, tube and coupler scaffolds, and fabricated frame scaffolds to be tied and braced at 26 feet vertically (25 feet for wood pole scaffolds) and 30 feet horizontally (25 feet for wood pole scaffolds). These existing rules are often misinterpreted to mean that scaffolds less than 26 feet high (25 feet for wood pole scaffolds) do not need guys, ties, or braces. Proposed paragraph (b)(13)(ii) would replace the 26- and 25-foot limits with a requirement that all scaffolds required to have guys, ties, or braces, would have to have such connections

installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (measured from one end only). The 30 foot limit is the same as the existing limit on horizontal spacing contained in § 1910.28 (c)(13) and (d)(9), and would replace the 25-foot limit of § 1910.28(b)(4). The following are examples of how this rule would be applied: (a) If a scaffold is five feet wide, 18 feet high and 50 feet long, no vertical or horizontal ties and braces would be required because the height is less than four times the width and the four to one rule does not require connections; (b) if the scaffold is five feet wide, 50 feet high, and 25 feet long, ties and braces would be required at least the 20- and 40-foot levels at both ends of the scaffold (four ties and braces in all); (c) if the scaffold is five-feet wide, 50-feet tall, and 70-feet long, ties and braces would be required at least at the 20- and 40-foot levels. These would be installed starting from either end, at least at the zero, 30-, 60-, and 70-foot horizontal distances (eight ties and braces in all).

Paragraph (b)(14) of § 1915.252 would consolidate rules §§ 1910.28 (a)(2), (b)(1), (c)(7), (d)(4), (e)(1), and (f)(7), all of which require that scaffolds rest upon a stable, firm, level footing. This is not a new requirement, although the language is changed for purposes of clarity and uniformity.

Paragraph (b)(15) of § 1915.252 would consolidate rules §§ 1910.28 (a)(14), (b)(1), (c)(7), 1910.29 (b)(2), (d)(3), and 1915.71 (c)(1) and (d)(3), all of which require that uprights be secure, plumb, and braced to prevent swaying and displacement of the scaffold. This is not a new requirement, although the language is changed for purposes of clarity and uniformity.

Paragraph (b)(16) of § 1915.252 is the first of the paragraph (b) rules which specifically address suspension scaffolds. This proposed rule requires suspension support devices to rest on surfaces capable of supporting the suspension scaffold. It is based on § 1910.28(f)(10), and addresses the problem of adequate support for the scaffold system. It is the suspension scaffold equivalent of proposed rule (b)(14), which requires firm footing for supported scaffolds. Although the existing rule applies only to mason's adjustable multiple-point suspension scaffolds, OSHA believes that proper outrigger support is a concern for all suspension scaffolds.

Paragraphs (b) (17), (18) and (19) of § 1915.252 would set forth conditions required for the use of outrigger beams, but would not require that such beams be used on suspension scaffolds.

Paragraph (b)(17) would require beams to be made of structural metal and to be restrained to prevent movement. This is the same requirement as §§ 1910.28 (f)(4) and (i)(10), except OSHA proposes to apply the rule to all scaffolds supported by outrigger beams. Paragraph (b)(18) would require stabilizing the inboard ends of outrigger beams by direct connections to the floor, roof, or deck or by the use of counterweights. This rule clarifies § 1910.28(h)(5) which requires only that outriggers be securely fastened or anchored. Counterweights are not addressed in the existing standard, and the proposal corrects this oversight. Counterweights are often the only way to anchor a scaffold without damage to the supporting floor, deck, or other support.

Paragraph (b)(18)(i) of § 1915.252 would require that direct connections be evaluated by a capable person to insure that the roof or floor deck is capable of supporting the loads to be imposed. Paragraph (b)(18)(ii) would require that counterweights be made of solid material, and, in effect, prohibits the practice of using sandbags or water-filled buckets as counterweights. Such counterweights are easily displaced and may leak. Paragraph (b)(18)(iii) would require counterweights to be mechanically attached to the outrigger beam. This provision would help protect against accidental counterweight displacement. Paragraph (b)(18)(iv) would prohibit the removal of counterweights from a scaffold until the scaffold is disassembled. This new rule is also intended to prevent scaffolds from being improperly balanced. Paragraph (b)(18)(v) would require outrigger beams to be tied back as an additional means of anchorage. This new provision would provide a back-up system in case the counterweights become displaced. Although tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground and from causing a progressive failure of nearby scaffolds and scaffold sections. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage for tie-backs because they are often made of materials that cannot support the loads that would be imposed on them if a counterweight system were to fail. Paragraphs (b)(18) (vi) and (vii) would specify how tiebacks are to be installed.

Paragraph (b)(19) of § 1915.252 would specify the construction requirements for outrigger beams. Paragraph (b)(19)(i) is based on § 1910.28 (f)(9) and (h)(5), and would require stop bolts or shackles at each end of the beam to prevent the beam, as well as anything supported

from the beam, from coming off the beam or beam support. Paragraph (b)(19)(ii) would allow the use of channel beams in lieu of "I" beams, provided they are fastened together with their flanges turned out. Paragraph (b)(19)(iii) is a new rule and would require that outrigger beams be installed with all bearing supports installed perpendicular to the beam centerline. This would help prevent tipping of the beam due to any eccentric loading. Paragraph (b)(19)(iv) would require all outrigger beams to be used with their web in a vertical position. This provision is based on § 1910.28 (f)(8) and (h)(5). Paragraph (b)(19)(v) would specify the correct alignment for steel shackles, clevises, and the hoisting drum when single outriggers are used. This provision is the same as § 1910.28(f)(13).

Paragraph (b)(20) of § 1915.252 would address the types of supports, other than outrigger beams, used to suspend suspension scaffolds. Paragraph (b)(20)(i) would require that support devices such as cornice hooks, roof hooks, roof irons, and parapet clamps, be made of mild steel or equivalent material, and is the same as §§ 1910.28(g)(4) and 1915.71(f)(1). Paragraph (b)(20)(ii) is a new rule and would require the use of bearing blocks to spread loads. Paragraph (b)(20)(iii) would require the use of tiebacks, the same as § 1910.28(g)(4). The proposal, however, would specify in paragraph (b)(20)(iv) that the tiebacks must be equivalent in strength to the hoisting ropes. The tiebacks must be as strong as the hoisting ropes as they may have to support the scaffold in the event of a scaffold hoist rope failure. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if the support device were to fail.

Paragraph (b)(21) of § 1915.252 would specify the minimum length of suspension rope to be used at each installation. The proposal is based on rules § 1910.28 (f)(12) and (h)(7), with the clarification that either the rope shall be long enough to allow the scaffold to be lowered to the next level without the rope end passing through the hoist, or the rope shall be configured or provided with a means to prevent its end from passing through the hoist. OSHA believes this provision will prevent accidental runthrough of the suspension rope.

Paragraph (b)(22) of § 1915.252 would prohibit the use of repaired wire ropes as suspension ropes. This is a new

requirement and is based on OSHA's view that there is no way to determine the strength capacity of a repaired wire rope without the danger of over-stressing the repair and thus rendering the rope unsafe for use on scaffolds. This provision does not prohibit joining together two or more pieces of wire rope as allowed by paragraph (b)(23) of § 1915.252.

Paragraph (b)(23) of § 1915.252 would allow suspension ropes to be joined together only by the use of eye splices with shackles, or coverplates and bolts. This would be a new requirement and is based on similar rules being developed by ANSI in the current review of the A10.8 scaffold standards. These are the only acceptable ways to connect wire ropes without affecting their strength capacities.

Paragraph (b)(24) of § 1915.252 would require the load ends of wire suspension ropes to be equipped with proper size thimbles, and to be secured by eye splicing or equivalent means. This requirement is based on § 1920.28 (f)(12) and (h)(9).

Paragraph (b)(25) of § 1915.252 would prohibit the use of defective or damaged ropes, and is based on § 1910.28(u)(5) which prohibits damaged ropes from being used on float or ship scaffolds. Like the other rules discussed in this section, this rule is proposed to apply to all suspended scaffolds. The danger of a broken line is a problem not confined to float or ship scaffolds.

Paragraph (b)(26) of § 1915.252 would require that swaged attachments or spliced eyes on wire suspension ropes be used only if they are made by the wire rope manufacturer or a qualified person. This would be a new requirement and is based on similar rules being developed by ANSI in the current review of the A10.8 scaffold standard.

Paragraph (b)(27) of § 1915.252 would require that wire rope clips be retightened after the initial loading and periodically thereafter. Such clips can work loose under cyclic loading and should not be assumed to be properly tightened without being checked on a regular basis.

Paragraph (b)(28) of § 1915.252 would require that scaffold hoists, both mechanically-powered and manually-powered, be of a type approved by a nationally recognized testing laboratory. This provision is a consolidation of existing provisions in § 1910.28 (f)(2), (g)(3), (h)(2), and (i)(1).

Paragraph (b)(29) of § 1915.252 would prohibit the use of gasoline-powered hoists on suspension scaffolds, and is based on OSHA's belief that gasoline hoists present fire hazards which are not

acceptable given the confined area of a scaffold. Timely escape from a fire could be very difficult, and perhaps impossible, if the hoist is incapacitated.

Paragraph (b)(30) of § 1915.252 would require mechanically-powered operated gears and brakes to be enclosed, and is the same requirement as § 1910.28(i)(3).

Paragraph (b)(31) of § 1915.252 would require that an automatic braking device or locking pawl be provided, in addition to the normal operating brake, to slow hoist when its normal speed of descent (as recommended by the hoist manufacturer) is exceeded. This is the same requirement as § 1910.28(i)(4), except the proposed requirement would apply to manually-powered hoists as well as mechanically-powered hoists.

Paragraph (b)(32) of § 1915.252 would provide that where manually-powered hoists are used, the scaffold shall not be capable of being lowered without a positive crank force being applied to the hoist. This is a new requirement and is based on OSHA's view that it will eliminate the dangerous condition of "free-running" hoists during descents. OSHA requests comments and supporting information on the need for this requirement.

Paragraph 1915.252(c)—Access. Paragraphs (c) (1) through (6) of § 1915.252 set forth the requirements for safe access to scaffolds. They are intended to clarify the requirement of § 1910.28(a)(12), which requires "an access ladder or equivalent safe access shall be provided," and to consolidate this requirement with § 1915.71(k). However, these provisions would not apply to employees performing scaffold erection and dismantling operations because such rules are not feasible until a scaffold has been erected and properly braced.

Paragraph (c)(1) of § 1915.252 provides that access to and between scaffolds more than two feet above or below the point of access shall be by certain specified means. These means of access are the same as are presently recognized by ANSI and other consensus groups. The two-foot limit is a change from § 1915.71(k)(1), which has a five-foot limit. This change is made because if one of the specified methods of access listed in paragraph (c)(1) of § 1915.252 is not provided until scaffolds are more than five feet above their supporting surface, then the only way of access is by climbing the crossbraces, and, as noted below, this is not recognized as a proper means of access. In addition, the proposed provision allows the use of some types of access which are not presently recognized by existing standards, but which OSHA believes are safe means of access. These include

integral prefabricated rungs, hook-on and attachable ladders designed for use with manufactured types of scaffolds, and direct access from other scaffolds, structures, personnel hoists, or similar surface. However, the paragraph prohibits the use of crossbracing as a means of access. OSHA believes that crossbraces do not provide adequate footings or handholds as they are not designed nor intended to serve as a means of access.

Paragraph (c)(2) of § 1915.252 would set forth the conditions required for the use of portable, hook-on, and attachable ladders as means of access. Paragraph (c)(2)(i) would require portable, hook-on, and attachable ladders to be positioned so as not to tip the scaffold. This is based on existing mobile scaffold rule § 1910.29(a)(3)(viii). Paragraph (c)(2)(ii) would require ladders to be positioned such that it is not necessary for employees to step more than one foot from the ladder to any intermediate landing or platform. This is the same rule as § 1915.71(k)(3). Paragraph (c)(2)(iii) would require that the bottom rung of hook-on and attachable ladders be not more than 24 inches above the scaffold supporting level. This would allow scaffolds to be leveled and adjusted without constantly adjusting the ladder, up to a maximum of 24 inches. Paragraph (c)(2)(iv) would require landing platforms be provided at 20-foot maximum vertical intervals for hook-on and attachable ladders. The proposal does not require ladders to be offset every 20 feet, or that a landing be provided on the ladder itself. It would simply require that rest platforms be placed not more than 20 feet apart. Existing work platforms or walkways which are already part of the scaffold could be used to meet this requirement. OSHA requests comments and supporting information on the need for this requirement. Paragraph (c)(2)(v) would require hook-on and attachable ladders to be specifically designed for use with the manufactured types of scaffolds to be used to insure compatibility. Paragraphs (c)(2) (vi) and (vii) would specify minimum rung length and maximum rung spacing for hook-on and attachable ladders.

Paragraph (c)(3) of § 1915.252 would set forth the conditions required for the use of stairway-type ladders as means of access. Paragraphs (c)(3) (i) and (ii) are similar to paragraphs (c)(2)(ii) and (iii) above. Paragraph (c)(3)(iii) would require a minimum step length of 16 inches, and is based on § 1910.29(a)(3)(ii). Paragraph (c)(3)(iv) would require slip-resistant treads on all stairs and landings. This rule is based

on general industry rule § 1910.29(a)(3)(iv) which requires the steps to be fabricated from slip-resistant treads; however, the proposal would allow the use of other means to obtain the required surface, such as slip-resistant coatings. Paragraph (c)(3)(v) would require stairway-type ladders to be equipped with stairrails and handrails.

Paragraph (c)(4) of § 1915.252 would require ramps and runways to be provided with guardrails which meet the criteria set forth in proposed Subpart M—Fall Protection for Shipyard Employment. Paragraph (c)(5) of § 1915.252 sets forth the conditions required for the use of integral prefabricated scaffold rungs as means of access. Paragraph (c)(5)(i) would require that such rungs be specifically designed and constructed for use as rungs. That is, they must be capable of supporting ladder-type loads. Paragraph (c)(5)(ii) would require rungs to be at least 11½ inches long to provide adequate footing, and paragraph (c)(5)(iii) would require that rungs be uniformly spaced. These are the same requirements as for other types of ladders (see Notice of Proposed Rulemaking for Subpart E—Access and Egress). Paragraph (c)(5)(iv) would require rest platforms at 20-foot maximum vertical intervals, the same as (c)(2)(iii) above. Paragraph (c)(5)(v) would require a maximum spacing between rungs of 16½ inches, and is consistent with the provisions of proposed Subpart E.

Paragraph (c)(6) of § 1915.252 would require all rungs and steps to line up vertically with each other between rest platforms. This is to assure that a continuous climbing surface is provided. Employees descending a scaffold can misstep if rungs and steps are offset. An example of this is the use of integral rungs on frame scaffolds. If the frames are not oriented in the same direction (i.e., ladder rungs all on the same side) a non-continuous ladder surface will result which can cause a misstep.

Paragraph (c)(7) of § 1915.252 sets forth the conditions required for direct access from another surface to a scaffold. Direct access may be made only when the two surfaces are not more than 14 inches apart horizontally, and 24 inches apart vertically. The 14-inch dimension is based on proposed rule § 1915.252(b)(4). The 24-inch dimension is based on proposed rule § 1915.252(b)(4). The 24-inch dimension is consistent with similar provisions in the other paragraphs in paragraph (c) discussed above.

Paragraph 1915.252(d)—Use. This paragraph addresses the use of scaffolds

and the activities which take place on scaffolds.

Paragraph (d)(1) of § 1915.252 would prohibit the overloading of a scaffold. This requirement clarifies and consolidates §§ 1910.28 (a)(7), (f)(1), (g)(9), (h)(1), (q)(6), (r)(3), (u)(1), and § 1915.71(f)(8), and complements proposed rule of § 1915.252(a)(1) which requires that scaffolds be capable of supporting four times the maximum intended load without failure. This rule insures that the scaffold's capacity is not exceeded.

Paragraph (d)(2) of § 1915.252 would prohibit the use of shore or lean-to scaffolds, and is the same provision as § 1910.28(a)(24).

Paragraph (d)(3) of § 1915.252 would require supported scaffolds to be inspected for visible defects periodically, and after any occurrence which could affect the scaffold's structural integrity. Examples of such occurrences are impact loadings caused by vehicles, hoists, extremely high winds, or any other event which places large stresses on the system. This rule would also require the inspection of suspension scaffolds for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity. Inspection of suspension scaffolds is presently required by §§ 1910.28 (g)(8), (i)(6), and 1915.71(f)(3), which require inspections only of certain types of suspension scaffolds; however, OSHA believes all suspension scaffolds should be inspected. In the Specific Issues section of this preamble, OSHA requests public comment on the frequency of inspection and on the qualifications needed by the employee doing the inspecting.

Paragraph (d)(4) of § 1915.252 would require the bracing, or removal until repaired, of all scaffold components which have been damaged or weakened such that their strength has been reduced to less than that required by paragraph (a)(1) of § 1915.252. This requirement clarifies and consolidates existing requirements in §§ 1910.28 (a)(6), (m)(6), and § 1915.71(b)(5). Bracing would be allowed as the removal of a damaged component may not be possible without complete disassembly of the scaffold.

Paragraph (d)(5) of § 1915.252 would prohibit the movement of scaffolds while employees are on them, except that mobile scaffolds may be moved under certain specified conditions. This rule combines the provisions of existing rules § 1915.28(a)(5) and § 1910.29 with

respect to moving scaffolds when they are occupied.

Paragraph (d)(6) of § 1915.252 would restrict the use of scaffolds near exposed and energized electric power lines. This is a new requirement for shipyard employment, and is based on similar provisions developed for the use of scaffolds in the construction industry. OSHA believes these rules are equally applicable to the shipyard environment. Paragraphs (d)(6) (i) and (ii) prohibit the use of scaffolds closer than 10 feet to all energized lines of 300 volts or more, even if the lines are insulated. Paragraph (d)(6)(iii) allows scaffolds to be used within two feet of energized lines less than 300 volts, provided the lines are insulated. Paragraph (d)(6)(iv) prohibits the use of scaffolds closer than 10 feet to all energized uninsulated lines, of any voltage, which are exposed (not covered or guarded from contact by employees). OSHA believes these clearances would allow work to be performed safely without the need for power lines to be deenergized.

Paragraph (d)(7) of § 1915.252 would allow scaffolds to be erected, moved, dismantled, or altered only under the supervision of a capable person. It is the same requirement as § 1915.71(b)(7).

Paragraph (d)(8) of § 1915.252 would clarify the provision of § 1910.28(a)(19) regarding work on slippery scaffold platforms. The proposal states that no work shall take place on slippery platforms except to remove the hazard.

Paragraph (d)(9) of § 1915.252 would require the use of tag lines or similar measures to stabilize swinging loads being hoisted onto scaffolds or near scaffolds where the load could damage or impact the scaffold. This is based on § 1910.28(a)(15) which requires tag lines when loads are being hoisted onto the scaffold. The proposal would extend the provision to cover other hoisting operations as the hazard being guarded against is the same, regardless of the destination of the load.

Paragraph (d)(10) of § 1915.252 would require that suspension ropes be shielded from harm caused by heat-producing processes, and shielded, treated, or otherwise protected when acids and other corrosive substances are used on a scaffold. This requirement is essentially the same as § 1910.28(a) (21) and (27) which require that only treated or protected fiber or synthetic ropes be used near corrosive substances and that "special precautions shall be taken" when heat-producing processes are used on scaffolds. This provision modifies § 1915.71(b)(8) which prohibits welding, burning, riveting or open flame work on scaffolds supported by fiber

rope. The proposal recognizes that shields can be used to protect suspension ropes during such work. Public comment is requested, however, on what criteria, if any, should be set forth for such shields.

Paragraph (d)(11) of § 1915.252 would prohibit work on scaffolds during storms or when wind speeds exceed 40 mph, unless body belt/harness systems are worn or wind screens are erected. This requirement is based on § 1910.28(a)(18). The existing rule prohibits all work on scaffolds "during storms or high winds." Public comment is requested in the Specific Issues section of this preamble on whether the 40 mph limit is appropriate, and what other methods are available to protect employees from high winds.

Paragraph (d)(12) of § 1915.252 would prohibit accumulation of debris on scaffold platforms and is based on § 1910.28(a)(20).

Paragraph (d)(13) of § 1915.252 would prohibit the use of ladders or makeshift devices on scaffolds to raise the working level of employees. This would be a new provision and would assure that workers are provided with a secure work platform, and would eliminate the hazard of tipping caused by portable ladders exerting a sideways thrust on scaffold systems.

Paragraph (d)(14) of § 1915.252 would limit the degree to which platform units could deflect under load. This is to prevent platform units from becoming overstressed and to prevent their ends from being pulled off the end supports.

Paragraph 1915.252(e)—Fall protection. This paragraph would provide protection against the hazards of falling from or through a scaffold.

Paragraph (e)(1) of § 1915.252 clarifies and consolidates the following existing rules: §§ 1910.28 (a)(3), (b)(15), (c)(14), (d)(7), (f)(15), (g)(5), (h)(8), (i)(5), (j)(4), (m)(7), (n)(8), (r)(3), (u)(6), 1910.29(a)(3), and 1915.71 (c)(9), (d)(8), (e)(10), (f)(9), (g)(6), (h)(1), and (j). Whereas the existing rules are specific requirements to have guardrails only or safety belts only, the proposal would require that all employees on scaffolds be protected by a choice of guardrails or body belt/harness systems, with certain exceptions discussed below.

The proposal would require fall protection as follows: when the scaffold is any height above water, the same as § 1915.71(j)(1); when the scaffold is on a vessel or vessel section and more than five feet above lower levels, the same as § 1915.71(j)(1); when the scaffold is immediately adjacent to a vessel or vessel section and more than five feet above lower levels, the same as OSHA's current interpretation of § 1915.71(j)(1);

and when the scaffold is in any other area and more than 10 feet above lower levels, the same as § 1910.28(a)(3).

Paragraph (e)(1)(i) of § 1915.252 recognizes the impracticability of using any fall protection system other than body belt/harness systems on certain types of scaffolds. This consolidates § 1910.28(j)(4)—boatswains' chairs; § 1910.28 (n)(8)—needle beam scaffolds; § 1910.28(u)(6)—float scaffolds, and is a new rule for ladder jack scaffolds.

Paragraph (e)(1)(ii) of § 1915.252 would require both body belt/harness systems and guardrail systems on all single-point adjustable suspension scaffolds (except boatswains' chairs) and on all two-point adjustable suspension scaffolds. The requirement to have both guardrails and body belt/harnesses on two-point scaffolds is the same as § 1910.28 (g)(5) and (g)(9). Guardrail systems alone do not provide adequate fall protection when a suspension rope fails, causing a scaffold to tip or hang from only one end. Body belt/harness protection would also be required on single-point systems as the hazard related to rope failure is the same on both types of scaffold. However, as body belt/harnesses would be the primary means of fall protection on single-point and two point systems, Type II guardrail systems may be used in lieu of Type I systems. Type I and Type II guardrail systems are the same in all respects except Type II systems have lower minimum height and strength requirements than Type I systems (see proposed § 1915.252(e)(4) below).

Paragraph (e)(1)(iii) of § 1915.252 is essentially the same as § 1910.28(t)(2), which requires lifelines along "crawling boards," except that the proposal would allow the alternative use of body belt/harness systems or guardrail systems.

Paragraph (e)(1)(iv) of § 1915.252 would require that employees on self-contained scaffolds be protected by body belt/harness and guardrail systems when the platform is supported by ropes (as when the scaffold is being raised or lowered on some systems) and by guardrail systems when the platform is supported directly by the scaffold frame.

Paragraph (e)(1)(v) of § 1915.252 would require guardrails to be used along scaffold walkways and to be located within eight inches of at least one side of the walkway. The provision that guardrails need be provided only along one side applies only when the platform is used as a means of access to get from one point on the scaffold to another. If other work activities are performed on or from the walkway, then the platform is not considered to be a

walkway (see definition of "walkway") and the provisions of paragraphs .252(e)(1) (i) through (v) would apply.

Paragraph (e)(1)(vi) of § 1915.252 would allow portions of guardrail systems to be removed or omitted where the vessel, vessel section, building, or structure is configured in such a way as to preclude their use. However, when guardrails are not used, body belt/harness systems (and personal flotation devices when employees are over water) would be required. This is the same provision as § 1915.71(j)(3).

The provisions of § 1915.252(e)(1) would not apply to employees erecting or dismantling scaffolds. OSHA believes that there is no recognized feasible way of providing fall protection for such employees. However, public comment is requested on this point in the Specific Issues section of this preamble. In addition, the provisions would not apply if a scaffold is completely enclosed by the walls of a structure. To be completely enclosed, no perimeter face of the scaffold may be more than 14 inches from a wall. In other words, there may be no open sides or ends on the scaffold. However, fall protection would be required at openings such as hoistways, elevator shafts, stairwells, or similar openings in the scaffold platform, or in the walls of the structure surrounding the platform. This is the same requirement as contained in § 1910.28(a)(3)(i).

Paragraph (e)(2) of § 1915.252 would require guardrail systems along the front side (i.e. the side closest to the vessel being worked on) of all scaffolds suspended from vessels when the scaffolds are triced out of line, and on all scaffolds mounted on floats which are subject to surging. As an alternative to guardrail systems, employees may be protected by a body belt/harness system attached to a guardrail system installed on the side of the platform which is away from the vessel. These are the same requirements as in § 1915.71(j)(4).

Paragraph (e)(3) of § 1915.252 would provide that body belt/harnesses be secured by lanyard to a dropline, trolley line, or scaffold structural member. However, body belt/harnesses are effective only when there are no overhead scaffold components. When there are such overhead components, such as additional platforms on a multi-level suspended scaffold, or a falling object canopy, and when there is a failure of the scaffold support system, and employee could be seriously injured or killed when the dropline body belt/harness arrangement arrests the employee's fall, and the overhead

component of the scaffold strikes the employee as the scaffold falls to the ground. Therefore, § 1915.252(e)(3) would provide that when a scaffold has overhead obstructions, then droplines shall not be used. Paragraph (e)(3)(i) would provide that when droplines are used, they not be connected to the scaffold. This is the same requirement as in § 1910.28(g)(9). Paragraph (e)(3)(ii) would provide that when trolley lines are used, they not be connected to the suspension lines. This would provide protection to the employee in the event of a suspension line failure. Paragraph (e)(3)(iii) would provide that when lanyards area connected to trolley lines or scaffold members on two-point adjustable scaffolds, the scaffold shall be equipped with additional independent support lines. In the event of a suspension rope failure, the additional lines would keep the scaffold from falling. Paragraph (e)(3)(iv) would prohibit droplines, independent support lines, and suspension ropes from being attached to each other or to the same point of anchorage.

Paragraph (e)(4) of § 1915.252 would require guardrail systems to conform to provisions essentially the same as those discussed in the preamble to proposed Subpart M—Fall Protection. However, because additional fall protection on single-point adjustable and two-point adjustable suspension scaffolds would be provided by body/belt harness systems, the guardrail requirements on these types of scaffolds are proposed to be less stringent than on other scaffolds where guardrails are the principal fall protection system. Guardrails on single-point adjustable and two-point adjustable suspension scaffolds are considered by OSHA primarily to be barriers that serve as scaffold edge delineators, restrain movement, provide handholds, and prevent misstepping. These functions do not require the same size and strength guardrail system as does fall protection. Therefore, the minimum requirements for guardrail systems, (referred to as Type II systems) used on single-point and two-point scaffolds would be less than those for other guardrail systems (referred to as Type I systems) used on other scaffolds. The specific differences are set forth in proposed paragraphs (e)(4) (ii), (vii), and (viii), discussed below.

Paragraph (e)(4)(i) of § 1915.252 would require that guardrail systems installed to meet the requirements of this section be installed along all open sides and ends of the platform. This is the same requirement as § 1910.28(a)(3) and 1915.71(j).

Paragraph (e)(4)(ii) of § 1915.252 would specify a minimum guardrail system height of 38 inches for Type I guardrail systems and 36 inches for Type II guardrail systems. The 38-inch lower limit for Type I systems is proposed in lieu of the existing 36-inch lower limit specified for shoreside scaffolds in § 1910.28(a)(3) because a study concerned with selected ergonomic considerations related to fall protection (Ref. 3:35) indicates that the existing 36-inch limit does not provide adequate employee safety. That study recommends a guardrail height of 42 inches, the same as the existing lower limit for Part 1915 type scaffolds. However, OSHA believes the proposed limit of 38 inches is appropriate for scaffolds, because it allows for guardrail height differentials caused by platform unit arrangements. For example, a frame constructed to hold a top rail 42 inches above a flush-mounted prefabricated deck would be only 40 inches above a platform made with two-inch solid sawn planks. Where the planks are overlapped to form a long platform, the top rail height drops to 38 inches. (It should be noted that the 36 inch limit proposed for Type II guardrails is acceptable because Type II systems are not used as the primary means of fall protection.) The maximum height limit would be 45 inches for all scaffold guardrail systems. These limits are consistent with limits being developed for the construction and general industry standards. However, public comment is requested on these points in the Specific Issues section of this preamble.

Paragraph (e)(4)(iii) of § 1915.252 would require midrails, screens, mesh, intermediate vertical members (such as balusters), solid panels, or equivalent structural members be installed between the top edge of the guardrail system and the scaffold platform. This is essentially the same provision as § 1910.28(a)(3), except it has been rewritten to clarify the requirement, and to allow additional types of protection as alternatives to midrails.

Paragraphs (e)(4) (iv) through (vi) of § 1915.252 specify the criteria for the installation of the midrails, screen, mesh, and baluster type protection required by paragraph (e)(4)(iii) of § 1915.252.

Paragraphs (e)(4) (vii) and (viii) of § 1915.252 would specify that Type I top rails (or equivalent) be capable of withstanding a force of at least 200 pounds applied in any downward or horizontal direction at any point along the top rail (Type II guardrail systems would have a 100 pound minimum requirement) and not deflect to a height

lower than the specified limit set forth in paragraph (e)(4)(ii). The force requirement for midrails, screens, mesh, and other intermediate types of protection in paragraph (e)(4)(ix) would be at least 150 pounds for Type I systems, and 75 pounds for Type II systems. The 150 pound force requirement replaces the § 1910.28(a)(3)(ii) and the § 1915.71(j)(2) requirements to use specified sizes of lumber.

Paragraph (e)(4)(x) of § 1915.252 would recognize that a separate guardrail section is not required on the ends of suspension scaffolds when the scaffold's support system (stirrup) or hoist does not allow passage of employees.

Paragraph (e)(4)(xi) of § 1915.252 would require top rail and midrail surfaces to be free of puncture, laceration, and snagging hazards. This is essentially the same requirement as in § 1910.23(e)(1).

Paragraph (e)(4)(xii) of § 1915.252 would require that top rails and midrails not be so long as to constitute a hazard, and is the same requirement as § 1910.23(e)(1).

Paragraph (e)(4)(xiii) of § 1915.252 would be a new requirement and would prohibit the use of steel banding and plastic banding as top rails or midrails. While such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand if seized.

Paragraph 1915.252(f)—Falling object protection. This paragraph would address the hazard of objects falling onto employees working on scaffolds. Protection against objects falling from scaffolds is provided by proposed Subpart M—Fall Protection.

Paragraph (f)(1) of § 1915.252 would require that, in addition to hardhat protection, overhead protection be provided as necessary for employees on scaffolds when they are exposed to the hazard of objects falling from overhead. This paragraph is based on existing rules §§ 1910.28 (a)(16) and (f)(16), and is consistent with § 1915.71(j)(5).

Paragraph (f)(2) of § 1915.252 would require canopies, when used as falling object protection, to be installed between the hazard and the employees. This is the same provision as § 1915.28(f)(16) except the specific nine foot height limit is deleted as unnecessarily specific.

Paragraph (f)(3) of § 1915.252 would require the use of additional independent support lines when canopies are used on suspension scaffolds. The lines would support the

scaffold in the event of suspension support rope failure. The reason for this requirement has been explained earlier in the discussion of § 1915.252(e)(4).

Paragraph (f)(4) of § 1915.252 would require that independent support lines and suspension ropes not be attached to the same point of anchorage. This new rule would prevent the loss of the backup safety systems in the event of suspension rope anchorage failure.

Paragraphs (f)(4) and (5) of § 1915.252 would require toeboards on scaffolds to protect employees who are below the scaffold from falling objects. These paragraphs are based on existing rules § 1915.71(j)(5) and § 1910.28(a)(3) respectively.

Section 1915.253 Additional requirements applicable to specific types of scaffolds

This section contains rules which would apply only to specific types of scaffolds as indicated. These rules would apply in addition to the general rules of § 1915.252. In keeping with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, the existing Part 1910 provisions requiring scaffold drawings and specifications to be made available to the employer and for inspection purposes, are proposed to be deleted as to their application in shipyards. These provisions are contained in § 1910.28(b)(16), (c)(4), (c)(5), (d)(11), and (e)(3). However, the employer may want to maintain the records anyway to serve as a reference point for future evaluation of a scaffold's design and its load limits. Such records would be valuable in determining whether or not a scaffold is overloaded.

Paragraph 1915.253(a)—Pole scaffolds. This paragraph combines the "wood pole scaffolds" of § 1910.28(b) and the "independent pole wood scaffolds" of § 1915.71(c). The word "wood" would be deleted from the title as used in the existing supports, as such scaffolds can be made of other materials. The paragraph addresses both independent pole (double pole) scaffolds and single pole scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(a)(1).....	§ 1910.28(b)(14), § 1915.71(c)(4).
§ 1915.253(a)(2).....	§ 1910.28(b)(9), § 1915.71(c)(6).
§ 1915.253(a)(3).....	§ 1910.28(b)(10), § 1915.71(c)(6).

Proposed paragraph	Existing paragraph
§ 1915.253(a)(4).....	§ 1910.28(b)(10), § 1915.71(c)(6).
§ 1915.253(a)(5).....	§ 1910.28(b)(5), § 1915.71(c)(5).
§ 1915.253(a)(6).....	§ 1910.28(b)(5), § 1915.71(c)(5).
§ 1915.253(a)(7).....	§ 1910.28(b)(7), § 1915.71(c)(4).
§ 1915.253(a)(8).....	§ 1910.28(b)(7), (10).
§ 1915.253(a)(9).....	§ 1910.28(b)(2), § 1915.71(c)(2), (3).
§ 1915.253(a)(10).....	§ 1910.28(b)(16).

Paragraph (a)(11) of § 1915.253 would require that wood pole scaffolds not be erected beyond the reach of firefighting equipment. This is the same provision as § 1910.28(b)(17) except the word "effective" would be deleted from the paragraph to clarify the requirement.

The remaining pole scaffold provisions of Subparts D and E would not be carried forward in this paragraph as specific provisions for pole scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(b)—Tube and coupler scaffolds. This paragraph combines the "tube and coupler scaffolds" of § 1910.28(c) and the "independent pole metal scaffolds" of § 1915.71(d). The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(b)(2).....	§ 1910.28(c)(11), § 1915.71(d)(6).
§ 1915.253(b)(3).....	§ 1910.28(c)(12), § 1915.71(d)(6).
§ 1915.253(b)(4).....	§ 1910.28(c)(12).
§ 1915.253(b)(5).....	§ 1915.71(d)(5).
§ 1915.253(b)(6).....	§ 1910.28(c)(9).
§ 1915.253(b)(8).....	§ 1910.28(c)(8).
§ 1915.253(b)(9).....	§ 1910.28(c)(8).
§ 1915.253(b)(11).....	§ 1910.28(c)(14), (5).

Paragraph (b)(1) of § 1915.253 is new for tube and coupler scaffolds and would require that platforms not be moved until the next location is properly prepared to support the platform being moved. This is the same requirement as § 1910.28(b)(14) for wood pole scaffolds. This rule is added to this section because it addresses the problem of platform stability during construction, a problem which exists for tube and coupler scaffolds as well as pole scaffolds.

Paragraph (b)(7) of § 1915.253 would require bearers to be long enough to provide full contact with the coupler. This is essentially the same as § 1910.28(c)(10), however, the

specifications are deleted because component strength would be governed by proposed general rule § 1915.252(a)(1).

Paragraph (b)(10) of § 1915.253 would specify the types of materials from which couplers may be made. This substantive requirement is currently contained in existing definition § 1910.21(f)(6), "coupler," and is more appropriately incorporated into a substantive section of the proposed standard.

The remaining tube and coupler scaffold provisions of Subparts D and E would not be carried forward in this paragraph as specific provisions for tube and coupler scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(c)—Fabricated frame scaffolds. As discussed in the "definitions" section of this preamble, this type of scaffold is presently called a "tubular welded frame scaffold." The proposed name more appropriately describes the type of scaffold to be addressed.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.253(c)(2).....	§ 1910.28(d)(3).
§ 1915.253(c)(3).....	§ 1910.28(d)(5).
§ 1915.253(c)(6).....	§ 1910.28(d)(11).

Paragraph (c)(1) of § 1915.253 is new for fabricated frame scaffolds and would require that platforms not be moved until the next location is properly prepared to support the platform being moved. This would be done for the same reasons discussed for paragraph (b)(1) of § 1915.253.

Paragraph (c)(4) of § 1915.253 would require the locking together of end frames and is essentially the same as § 1910.28(d)(6). The requirement would only apply where uplift forces may be strong enough to displace the end frames or panels, such as when a hoist is being used that could snag the scaffold during a hoist operation.

Paragraph (c)(5) of § 1915.253 would specify the proper placement of platform support brackets. Improper placement of such cantilever supports can significantly reduce their support capacity and thus endanger employees working on the platform.

The remaining existing tubular welded frame scaffold provisions would not be carried forward in this paragraph as specific provisions for fabricated frame

scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(d)—Horse scaffolds. This paragraph combines the "horse scaffolds" of §§ 1910.28(m) and 1915.71(g). The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.253(d)(1).....	§ 1910.28(m)(1).
§ 1915.253(d)(2).....	§ 1910.28(m)(4).
§ 1915.253(d)(3).....	§ 1910.28(m)(5).
§ 1915.253(d)(4).....	§ 1910.28(m)(5).

The remaining existing horse scaffold provisions would not be carried forward in this paragraph as specific provisions for horse scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(e)—Bracket scaffolds. Bracket scaffolds are presently addressed by § 1910.28(k)—Carpenters' bracket scaffolds. The title is proposed to be changed to "Bracket scaffolds" to reflect the use of this scaffold by a variety of trades.

Paragraph (e)(1) of § 1915.253 would specify the types of attachment devices or systems used for supporting bracket type scaffolds. These are the same as presently required by § 1910.28(k)(2).

Paragraph (e)(2) of § 1915.253 would require folding-type metal brackets to be secured against folding when extended for use. This would be a new provision and is based on paragraph § 1926.451(x)(5)(i), which applies to similar scaffolds used in the construction industry.

The remaining existing bracket scaffold provisions would not be carried forward in this paragraph as specific provisions for bracket scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(f)—Outrigger scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1915.253(f)(1).....	§ 1910.28(e)(1).
§ 1915.253(f)(2).....	§ 1910.28(e)(1).
§ 1915.253(f)(3).....	§ 1910.28(e)(1).
§ 1915.253(f)(4).....	§ 1910.28(e)(1).
§ 1915.253(f)(5).....	§ 1910.28(e)(2).
§ 1915.253(f)(6).....	§ 1910.28(e)(2).
§ 1915.253(f)(7).....	§ 1910.28(e)(4).
§ 1915.253(f)(8).....	§ 1910.28(e)(3).

The remaining existing outrigger scaffold provisions would not be carried forward in this paragraph as specific provisions for outrigger scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(g)—Ladder jack scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(g)(1).....	§ 1910.28(g)(1).
§ 1915.253(g)(3).....	§ 1910.28(g)(3).
§ 1915.253(g)(4).....	§ 1910.28(g)(4).

Paragraph (g)(2) of § 1915.253 would require that all ladders used to support ladder jack scaffolds conform to the provisions of § 1915.86 of proposed Subpart E—Access and Egress. However, the paragraph would prohibit the use of job-made ladders to support ladder jacks because OSHA believes such ladders cannot be relied upon to have the capacity to support the heavy point loading caused by ladder jack brackets.

Paragraph (g)(5) of § 1915.253 would prohibit the bridging of one ladder jack scaffold to another. This would be a new requirement and would be made to assure the stability of the system and to prevent accidental overloading of the system. This provision would not prohibit passage from one scaffold to another.

The remaining existing ladder jack scaffold provisions would not be carried forward in this paragraph as specific provisions for ladder jack scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(h)—Window jack scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraph listed:

Proposed paragraph	Existing paragraph
§ 1915.253(h)(2).....	§ 1910.28(r)(1).
§ 1915.253(h)(3).....	§ 1910.28(r)(2).

Paragraph (h)(1) of § 1915.253 would require window jack scaffolds to be securely attached to the window opening. This new requirement would assure that the scaffold cannot be accidentally displaced.

The remaining existing window jack scaffold provisions would not be carried

forward in this paragraph as specific provisions for window jack scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(i)—Crawling boards (chicken ladders). Paragraph (i)(1) of § 1915.253 would be the same requirement as is presently contained in the fourth sentence of § 1910.28(t)(1), which specifies crawling board length. The remaining specific requirements of § 1910.28(t)(1) would be relocated to Appendix A as they would be effectively replaced by the general scaffold capacity requirements of § 1915.252(a)(1). The requirement to clinch nails would be deleted as this procedure is often not feasible due to the inaccessibility of the nail points. Existing paragraph § 1910.28(t)(2) would be replaced by the fall protection requirements of § 1915.252(e)(1).

Paragraph 1915.253(j)—Step, platform, and trestle ladder scaffolds. These types of scaffolds differ from ladder jack scaffold in that the platform rests directly on the ladder step or rung, whereas ladder jack scaffolds platforms rest on brackets. The proposed specific requirements in this paragraph are based on similar provisions being developed by the American National Standards Institute, and on similar provisions being developed by OSHA for the construction industry and for general industry application. The specification provisions currently in § 1915.71(e) would be replaced by the capacity requirements of proposed general rule § 1915.252(a)(1) and by the ladder provisions of proposed Subpart E—Access and Egress.

Paragraph (j)(1) of § 1915.253 would limit the height of the scaffold platforms to the second highest rungs or steps of ladders supporting the platform, and would provide increased scaffold stability by lowering the center of gravity. Paragraphs (j)(2), (3), and (4) of § 1915.253 are the same provisions as paragraphs (i)(2), (4), and (5) of § 1915.253 proposed for ladder jack scaffolds. Paragraph (j)(5) of § 1915.253 is the same requirement as current § 1915.71(e)(7).

Paragraph 1915.253(k)—Single-point adjustable suspension scaffolds. This paragraph would combine existing § 1910.28(i), single-point adjustable suspension scaffolds, and § 1910.28(j), boatswains' chairs, as boatswains' chairs are a form of single-point adjustable suspension scaffold.

The following table lists the proposed paragraphs which would not be substantively changed from the

corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(k)(1).....	§ 1910.28(i)(7).
§ 1915.253(k)(3).....	§ 1910.28(i)(5).
§ 1915.253(k)(5).....	§ 1910.28(i)(2).
§ 1915.253(k)(6).....	§ 1910.28(i)(3).

Paragraph (k)(2) of § 1915.253 would be essentially the same as § 1910.28(i)(8), and would require that all suspension ropes hang vertically. However, the proposal would provide an exception to this rule, allowing intermediate supports to change the rope direction from vertical, when the scaffold is to be used on the outside of a dome-type or slanted structure. OSHA is soliciting comments on this proposed rule in the Specific Issues section of this preamble.

Paragraph (k)(4) of § 1915.253 would be essentially the same as § 1910.28(j)(2), and would require boatswains' chairs to be rigged with crossed supporting slings. However, the proposal would add that the slings be rigged (usually with knots) to prevent slippage which could result in the platform being out-of-level. This would increase the stability of the seat.

Paragraph (k)(7) of § 1915.253 would require non-cross laminated wood chairs to be reinforced on their underside by cleats. Existing rule § 1910.28(j)(1) requires all chairs to be cleated. This proposed rule recognizes the inherent strength qualities of cross-laminated-type wood seats such as those made with plywood.

The remaining existing single-point provisions would not be carried forward in this paragraph as specific provisions for single-point adjustable suspension scaffolds as the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(l)—Two-point adjustable suspension scaffolds. This paragraph combines the "two-point suspension scaffolds" of § 1910.28(g) and the "painters' suspended scaffolds" of § 1915.71(f). The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(l)(2).....	§ 1910.28(g)(1), § 1915.71(f)(4).
§ 1915.253(l)(3).....	§ 1910.28(g)(7).
§ 1915.253(l)(5).....	§ 1910.28(g)(11).

Paragraph (l)(1) of § 1915.253 would be essentially the same as paragraph

§ 1910.28(g)(1), which limits the width of platforms to 36 inches. However, the proposal would allow wider platforms if they are designed by a qualified person to prevent unstable conditions.

Paragraph (l)(4) of § 1915.253 would require that scaffolds be ladder-type, plank-type, or beam-type, the same as currently required by § 1910.28(g)(12). However, the specifications contained in existing paragraph § 1910.28(g)(12) (i) through (iii) would be replaced by the capacity requirements of § 1915.252(a)(1).

Paragraph (l)(6) of § 1915.253 would prohibit the bridging or connecting of two or more scaffolds during raising and lowering operations, unless they meet three criteria: first, the scaffolds must be specifically designed for use on multipoint systems; second, they must be articulated; and third, the hoists must be properly sized to support a bridged scaffold installation. This rule is based on § 1915.71(f)(7) and reflects OSHA's concern that a bridging device could cause significant overloading of the hoist which is nearest the bridging device during operation of the hoist, and could cause excessive platform tipping. Many hoists are only sized to support one end of a two-point system. If one of two bridged scaffolds were to be raised by a hoist, a bridge or connection between the scaffolds could cause the rising scaffold to pick up the second scaffold also. This would significantly increase the load on the hoist and could also result in the second scaffold tipping up at a dangerous angle. The proposed rule would address these two hazards by prohibiting an unsafe practice, but would also allow for properly engineered solutions as alternative means of compliance. This provision would not prohibit passage from one scaffold to another.

Paragraph (l)(7) of § 1915.253 would allow the passage of employees from one scaffold to another, provided the scaffolds are at the same height; are abutting closely; and walk-through stirrups are used.

The remaining existing two-point suspension and painters' suspended scaffold provisions would not be carried forward in this paragraph as specific provisions for two-point adjustable suspension scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(m)—Multi-point adjustable suspension scaffolds. This section would combine and clarify the provisions of § 1910.28(h), stonemasons' adjustable multi-point suspension scaffolds, and § 1910.28(f), masons' adjustable multi-point suspension scaffolds, and would clarify that the

paragraph applies to other multi-point adjustable suspension scaffolds as well.

Paragraph (m)(1) of § 1915.253 would prohibit bridging between scaffolds unless they are specifically designed to be bridged. Paragraph (m)(2) would allow passage of employees between adjacent units only when the platforms are at the same height and abutting closely. The reasons for these paragraphs are the same as those for paragraphs (1) (6) and (7) of § 1915.253 above.

Paragraph (m)(3) of § 1915.253 would specify the criteria for the support system, and is the same as § 1910.28(h)(4).

The remaining existing stonemasons' and masons' adjustable multiple-point suspension scaffold provisions would not be carried forward in this paragraph as specific provisions for multi-point adjustable suspension scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(n)—Catenary scaffolds. Although this type of scaffold is not specifically addressed in either existing standard, catenary scaffolds are covered by the existing general provisions of §§ 1910.28(a) and 1915.71(h). The following are new provisions that address concerns not presently covered by either the existing general rules or the proposed general provisions. These new provisions would be essentially the same as existing ANSI A10.8-1977, paragraph 22, except the specifications contained in that standard would be replaced by the general capacity provisions in proposed paragraph (a)(1) of § 1915.252.

Paragraph (n)(1) of § 1915.253 would allow only one platform between vertical pickups and only two platforms would be allowed on the entire system. This is the same provision as ANSI A10.8-1977, paragraph 22.4 except the maximum load limit of 500 pounds is deleted as being too restrictive. The intent of this provision is to prevent catenary scaffolds from being overloaded by prohibiting the employer from placing too many platforms on the system at one time and the general capacity provision § 1915.252(a)(1) would apply. However, public comment is requested in the Specific Issues section of this preamble as to what other load criteria, if any, are necessary to address these concerns.

Paragraph (n)(2) of § 1915.253 would require the platforms to be equipped with hook-shaped stops on each end to prevent the platform from falling should one of the two horizontal support ropes break.

Paragraph (n)(3) of § 1915.253 would prohibit the horizontal support ropes from being made so taut that use of the platform could cause them to break.

Paragraph (n)(4) of § 1915.253 would require each horizontal wire rope support to be continuous and unspliced.

Paragraph 1915.253(o)—Float (ship) scaffolds. Paragraph (o)(1) of § 1915.253 would require the scaffold to consist of at least two bearers with six inch projections, securely connected to the platform. Paragraph (o)(2) of § 1915.253 would require rope connections to be such that they will not slip nor cause the platform to tip or fall. Paragraph (o)(3) of § 1915.253 would provide that if two ropes are used, they shall be slung under the scaffold and up to the supports. These requirements are essentially the same as are required by §§ 1910.28(u) (3) and (5).

The remaining existing float scaffold provisions would not be carried forward in this paragraph as specific provisions for float scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(p)—Interior hung scaffolds. Paragraph (p)(1) of § 1915.253 would require that scaffolds be suspended only from the roof structure or other structural members such as a ship's overhead, or a building's ceiling beams. This is the same requirement as existing rule § 1910.28(p)(1).

Paragraph (p)(2) of § 1915.253 would require that the supporting members be inspected and checked for strength before the scaffold is erected. Such points of support cannot be assumed to be strong enough to support a scaffold as they may be already loaded to their capacity or they may have deteriorated over time. This is the same requirement as § 1910.28(p)(6).

Paragraph (p)(3) of § 1915.253 would delete the specific connection requirements of § 1910.28(p)(5), which OSHA believes are overly specific, and sets forth what OSHA considers to be current safe connection practices.

The remaining existing interior hung scaffold provisions would not be carried forward in this paragraph as specific provisions for interior hung scaffolds as the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(q)—Needle beam scaffolds. The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirement in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(q)(1).....	§ 1910.28(n)(1).
§ 1915.253(q)(2).....	§ 1910.28(n) (2) and (7).

Paragraph (q)(3) of § 1915.253 would require that support ropes be securely attached to the needle beams. This is a change from § 1910.28(n)(3), which requires all attachments to be either a scaffold hitch knot or eye splice. The existing rule is believed by OSHA to be too restrictive, as other knots and means of attachment, such as wire rope clips, can also adequately support the scaffold.

Paragraph (q)(4) of § 1915.253 would require support connections to be arranged such that the needle beams do not roll or otherwise become displaced. This provision is based on § 1926.451(4), a construction industry provision which OSHA believes should apply to all needle beam scaffolds.

Paragraph (q)(5) of § 1915.253 would require platform units to be bolted to the needle beam, or equivalent means of attachment used such as nails, to prevent the displacement of the units. This is a clarification of § 1910.28(n)(5) which only requires that planks be secured against slipping. Under the existing rule, cleats and overhang could be used to secure the units. However, OSHA does not believe that cleats or overhang are adequate measures to secure platform units on needle beam scaffolds.

Paragraph 1915.253(r)—Multi-level suspended scaffolds. These scaffolds are suspended scaffolds with more than one working level. Although these types of scaffolds are not specifically addressed in the existing standards, they are covered by the existing general requirements. The following provisions address concerns not presently covered by either the existing standard or the proposed general provisions.

Paragraph (r)(1) of § 1915.253 would require independent support lines in addition to the regular support ropes. These additional lines would support the scaffold and prevent collapse in the event of primary support line failure. The reasons for requiring these lines are given in the discussion for § 1915.252(e) which covers fall protection.

Because the primary support lines could fail anywhere between the scaffold and their point of anchorage (the anchorage itself could fail), paragraph (r)(2) of § 1915.253 would prohibit attaching independent support lines and suspension ropes to the same anchorage point.

Paragraph (r)(3) of § 1915.253 would prohibit platforms from being supported

by any other platform(s). This provision would protect against platform overloading by requiring each platform to be attached to the supporting stirrups or hangers.

Paragraph 1915.253(s)—Mobile scaffolds. This section would consolidate and clarify the provisions of § 1910.29 of the general industry standards. This paragraph would apply to all mobile scaffolds and not just to those which are manually propelled.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1915.253(s)(1).....	§ 1910.29 (a)(3)(iii), (b)(2), (e)(3).
§ 1915.253(s)(2).....	§ 1910.29(a)(4).

Paragraph (s)(3) of § 1915.253 is a new provision and is based on the construction industry provision § 1926.451(e)(6), which requires that propelling forces be applied as close to the base as possible for stability reasons. However, the proposal would limit the height at which the force could be applied to five feet to minimize the overturning forces generated when the propelling force is applied above the wheels. The five foot limit is high enough to allow the manual propelling of scaffolds.

Paragraph (s)(4) of § 1915.253 is a new provision and would eliminate the use of winches, forklifts, trucks, or other motor vehicles to move scaffolds which are not designed to be moved by such propulsion systems.

Paragraph (s)(5) of § 1915.253 is a new provision and would require scaffolds to be stabilized during movement. This provision is based on the construction industry provision, § 1926.451(e)(6).

Paragraphs (s)(6)(i)—(iii) of § 1915.253 are new provisions and are based on the construction industry provision § 1926.451(e)(7) which specifies minimum conditions for when employees may ride on moving scaffolds.

Paragraph (s)(6)(iv) of § 1915.253 is a new provision and would require the propelling force be applied directly to the wheels (not to the frame) when power systems are used to propel scaffolds, and would limit the speed of the scaffold to one and one-fourth miles per hour. This provision is intended to protect against a scaffold toppling over should it strike an object.

Paragraph (s)(6)(v) of § 1915.253 is a new provision and would prohibit

employees from riding on any part of a moving scaffold which extends outward beyond the wheels, casters, or other support.

Paragraph (s)(7) of § 1915.253 would require that scaffold platforms not to extend outward past the base supports of the scaffold. This provision would eliminate dangerous eccentric loading on the scaffold frame which could cause the scaffold to tip over. However, if stabilizing means such as outrigger supports are used, then the platform may extend outside the normal base points of support.

Paragraph (s)(8) of § 1915.253 would require that screw jacks or equivalent means be used to level mobile scaffolds when they are set up for stationary use. This provision is based on § 1910.29(a)(4)(iii).

Paragraph (s)(9) of § 1915.253 would be a new paragraph and would require caster and wheel stems to be secured to scaffold frames to prevent them from falling out at any time.

The remaining existing manually propelled mobile ladder stands and scaffolds (towers) provisions would not be carried forward in this paragraph as specific provisions for mobile scaffolds because the topics they address would be covered by the proposed general rules.

Paragraph 1915.253(t)—Crane or derrick suspended personnel platforms. Paragraph (t)(1) of § 1915.253 would require lifting bridges to consist of four legs attached to the platform to assure stability. This is the same provision as § 1915.71(b)(9).

Paragraph (t)(2) of § 1915.253 would specify the means of attaching the platform lifting bridges to the crane or derrick, and is the same provision as § 1915.71(b)(10).

OSHA is currently developing rules to cover personnel platforms used in the construction industry. Public comment is requested in the Specific Issues section of this preamble as to whether or not similar rules should be developed for shipyard employment.

Appendix A to Subpart N—Scaffold Specifications

As explained in the discussion for proposed § 1915.252(a), Capacity, Appendix A is a non-mandatory set of guidelines and tables provided to assist employers in complying with the requirements of § 1915.252(a). The provisions are essentially the same as found throughout the existing standards. An employer may use these guidelines and tables as a starting point for designing scaffold systems. However, the guidelines and tables do not provide all the information necessary to build a

complete system. For example, the tables for wood pole scaffolds do not specify the manner or type of joint construction. For all such components the employer is responsible for designing and assembling those components in such a way that the completed system will meet the requirements of § 1915.252(a). In addition, if the employer chooses to deviate from any provisions or guidelines in Appendix A, the scaffold must still comply with paragraph 1915.252(a).

Specific Issues

The public is specifically requested to comment on the following issues.

1. Proposed rule § 1915.252(e) specifies fall protection requirements for scaffolds. Those used on or near vessels must have fall protection whenever the fall distance is five feet or more, the same as § 1915.71(j)(1). Scaffolds used away from vessels must have fall protection whenever the fall distance is 10 feet or more, the same as § 1910.28(a)(3). A recent Bureau of Labor Statistics' study indicates that of all injuries which result from falls, a high percentage involves falling from elevations between five and 10 feet (Ref. 4:9). In addition, a high percentage of falls occurred while the employees were on scaffolds (Ref. 4:9). Public comment is requested on whether or not OSHA should extend the five foot rule to all scaffolds located and used in any part of a shipyard. Comments should include appropriate cost and injury data.

2. Is there a need for OSHA to regulate the use of electric welding equipment on suspended scaffolds? Should OSHA adopt any or all of the following draft rules which are presently being developed and evaluated by the ANSI A10.8 Scaffold Committee?

To reduce the possibility of the welding current arcing through the wire rope when welding from suspended scaffolds, the following precautions shall be taken:

(a) Use a suitable insulated thimble to attach each wire rope to its hanging support (such as a cornice hook or outrigger). Insulate extra rope from grounding.

(b) Cover the suspension wire rope with insulating material approximately four to five feet above the hoist, and below the hoist extending downward sufficiently to insulate the tail line from the unit. The portion of the tail line that hangs free below the unit must be guided and/or retained such that it does not become grounded.

Place non-conducting insulating material under wire rope so that it does not come in contact with ground.

(c) Cover each hoist with protective covers made from insulating material.

(d) Connect a grounding conductor from the unit to the structure. The size of this conductor must be equal to or greater than the size of the welding machine grounding lead and shall be a secondary conductor and must not be in series with the primary conductor between the welder and the work piece.

(e) If unit grounding lead is disconnected at any time, welding machine shall be turned off.

(f) At no time shall active welding rod or uninsulated welding lead be allowed to contact the stage or its supporting system.

3. Should the final rule prohibit the use of forklifts, front-end loaders, and similar pieces of equipment for the support of scaffold platforms? If so, what specific pieces of equipment should be prohibited and what other related requirements, if any, are necessary? Comments should include appropriate injury and cost data.

4. Proposed rule § 1915.253(s)(6)(ii) requires manually-propelled and motor-propelled mobile scaffolds to be not more than twice as high as they are wide when employees ride on them. Should OSHA raise the proposed 2 to 1 ratio to 3 to 1 or higher on those systems which are built with a low center-of-gravity? If this change is made, what limitations are appropriate?

5. Should OSHA require all platform units (planks, decks, etc.) to have their capacities or grades marked on them? Arguments in favor of this are that such marks could help prevent the use of inferior grades of plank in platforms, and that they would aid the user in determining the maximum load which can be placed safely on the plank or other unit. Arguments against this are that such marks can wear off, or that units can deteriorate making the marks no longer valid. Also, although such marks can be very useful in the construction of a safe scaffold, their presence or absence do not, in themselves, make a plank safe or unsafe.

6. Proposed rule § 1915.252(d)(11) would prohibit work on scaffolds during storms or when wind speeds exceed 40 mph, unless body belts are worn or wind screens erected. Comment is requested on the 40 mph limit, and on how to measure the windspeed. Recommendations on windspeed measurement range from monitoring hourly radio weather reports to placing anemometers on every scaffold. OSHA also solicits comments on other methods that might be used to provide employee safety in high winds.

7. Existing rule § 1910.28(g)(11) and proposed rule § 1915.253(1)(5) require two-point adjustable suspension scaffolds to be secured to prevent swaying. Should OSHA extend this rule to cover all suspended scaffolds?

8. Should proposed rule § 1915.252(e)(1), which provides that fall protection is not required for employees performing scaffold erection and dismantling operations, apply only to supported scaffolds? Such scaffolds do not have a recognized feasible place to which body belt/harness systems can be attached. However, suspended scaffolds are often located such that droplines can be conveniently used and, therefore, employees could be tied off.

9. Existing rule § 1910.28(i)(8) requires the supporting rope for single-point adjustable suspension scaffolds to be vertical. The proposed rule § 1915.253(k)(2) would allow an exception when the scaffold is used on the outside of a dome-type or slanted structure. Should some specified deviation from vertical be allowed when suspending a scaffold under a curved surface? If yes, what should be the maximum angle permitted, and what other conditions, if any, should be specified?

10. For the reasons discussed in the Summary and Explanation section of this preamble, the proposed rule § 1915.252(e)(4) would set the range of acceptable guardrail height at 38 inches to 45 inches for supported scaffolds, and would allow 36-inch high guardrails only for certain types of suspended scaffolds.

The ANSI A10.8 subcommittee on scaffolds considers the 36-inch lower limit to address adequately the hazard of falling from all types of scaffolds. This position is strongly supported by the Scaffold Industry Association (SIA). Their conclusions are based on the argument that OSHA's existing and proposed rules are based on studies (Ref. 5 and 6) which evaluated proper guardrail height for permanent structures, large areas where crowd control is important, and areas where high body speeds and momentum commonly are generated. These conditions, it is argued, do not exist on scaffolds and, therefore, the OSHA regulations are too restrictive and not appropriate for scaffold work. The SIA's conclusion is that a lower limit of 36 inches on scaffolds is as effective as a lower limit of 39 inches for permanent and large area structures. In addition, industry representatives state that no accident statistics, nor other field studies, indicate any problem caused by the current industry practice of using 36-inch high guardrails. Comment is requested on the effectiveness and cost

savings of a 36-inch lower limit for guardrail height.

11. Should OSHA accept crossbracing on the intermediate levels of built-up scaffolds as an alternative to the existing and proposed rules requiring guardrail systems on such levels? Are crossbraces as effective in providing fall protection as conventional guardrail systems? The existing and proposed OSHA rules do not recognize crossbracing as an effective guardrail-type system for preventing falls. However, industry representatives support the contention that, within limits, crossbracing can effectively perform as a guardrail-type system. Their position is that depending on the height of the cross point of the braces, crossbracing can effectively serve as a toprail, midrail, or in some situations, as both toprail and midrail. This position is supported to a degree by a study conducted by the University of Michigan (Ref. 6:37). However, an earlier study, also conducted by the University of Michigan (Ref. 7:143), does not support this concept.

The industry position that crossbracing can be as effective as guardrails is based on views similar to those discussed in Issue Number 10 above. Industry argues that the studies on which the requirements for guardrail systems are based do not properly reflect actual field conditions or accident statistics. For example, the Michigan study (Ref. 7:136) states there should be no opening in a guardrail or crossbrace system that would allow passage of a 19-inch sphere (19 inches is slightly less than the shoulder width of the 95th percentile U.S. adult male population). The industry position is that it is not a fair representation to equate a human body with a 19-inch sphere.

The specific provisions suggested by industry representatives for adoption by OSHA are as follows:

(a) Crossbracing on supported scaffolds may be used in lieu of a midrail provided the crossing point of the two braces is at or between 31 inches and 20 inches above the work surface.

(b) Crossbracing on supported scaffolds may be used in lieu of midrails and toprails provided the cross point of the two braces is at or between 48 inches and 30 inches above the work surface, and the end points at each upright are not more than 54 inches apart.

(c) Crossbracing may not be used in lieu of either a toprail or midrail on the top level of any supported scaffold.

The following have also been suggested as appropriate provisions:

(a) Crossbracing on supported scaffolds may be used in lieu of a toprail provided the crossing point of the two braces is at or between 39 inches and 49 inches above the work surface, and the end points at each upright are not more than 54 inches apart.

(b) Crossbracing on supported scaffolds may be used in lieu of midrails provided the crossing point of the two braces is at or between 30 inches and 20 inches above the work surface.

(c) Crossbracing may not be used in lieu of either a toprail or midrail on the top level of any supported scaffold.

(d) Crossbracing on supported scaffolds may not be used in lieu of both a toprail and midrail on the same scaffold level at the same time.

Comments and data reflecting engineering analysis and actual experience in the use of crossbracing are requested on the effectiveness of crossbracing when used in lieu of toprails, midrails, or both.

12. Should OSHA permit mobile scaffolds to be moved only along their longitudinal axis while employees are riding on them? This provision would be intended to maximize scaffold stability during movement, as tipping is most likely to occur when scaffolds are moved along their transverse axis.

13. Proposed rule § 1915.252(d)(3) would require supported scaffolds and scaffold components to be inspected for visible defects prior to each workshift and after any occurrence which could affect a scaffold's structural integrity. In addition, suspension scaffolds and scaffold components would need to be inspected for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity. Public comment is requested on whether or not the stated frequencies of inspection are appropriate or if some lesser or greater periods should be required. In addition, comment is requested on whether the inspector should be an engineer, a qualified person, or a capable person.

14. Should OSHA specify a minimum slippage capacity of 4,000 pounds and a minimum breakage capacity of 16,000 pounds for couplers used on tube and coupler type scaffolds? Industry proponents argue that such a rule is necessary to assure proper scaffold strength.

15. The proposed requirements do not limit the height at which single-point adjustable suspension scaffolds and two-point adjustable suspension scaffolds may be used. Should OSHA

set such a limit, and if so, what should this height be, and why?

16. Currently, OSHA does not regulate the use of stilts. Public comment is requested on whether or not such rules are necessary. Proponents for such rules should include accident data in their comments. If stilts should be regulated, comments are requested on appropriate rules, if any, regarding their construction, use, fall protection (i.e., guardrail height), floor conditions (i.e., level, no holes, no debris), and other necessary considerations.

17. Existing rules § 1910.28(a)(4) and § 1915.71(b)(1), and proposed rule § 1915.252(a)(1), require scaffolds to be capable of supporting, without failure, at least four times the maximum intended load. In evaluating whether a scaffold meets this criteria, both the Agency and the employer will need to have methods available to determine compliance. OSHA recognizes that field testing of scaffolds and scaffold components with loads four times greater than the maximum intended load could permanently damage and render useless the item being tested. Public comment is requested on appropriate field test procedures or means of certification for determining the capacity of scaffolds and scaffold components such as planks and ropes.

Comment is also requested concerning the qualifications that a person must have in order to make these kinds of tests or determinations.

18. Paragraph 1.(b) of Appendix A requires wood scaffold planks to be selected using the grading rules established by a recognized independent inspection agency for the species of wood used. Public comment is requested on whether or not a more specific requirement should be stated, and, if so, what should that requirement be?

19. Existing paragraphs (b)(16), (c)(4), (c)(5), (d)(11), and (e)(3) of § 1910.28 require specified types of scaffold to be designed by an engineer when the scaffolds to be built will exceed the limits set forth in existing Tables D-7 through D-16. Proposed rules § 1915.253 (a)(10), (b)(11), (c)(6), and (f)(8) also require specified components and scaffold types to be designed by an engineer when proposed Appendix A is not followed. However, there may be situations in which Appendix A could be safely modified by qualified persons. Public comment is requested on what scaffolds, if any, could be safely designed by a qualified person rather than an engineer? Are there situations in which only an engineer will be able to safely modify Appendix A? Also, while the existing tables and proposed

Appendix A specify the minimum size for many components, neither standard sets forth guidelines for every component used on scaffolds such as, but not limited to, base plates, splice plates, joints, ties, and braces (the proposed rule, however, does specifically require all such components to meet the 4:1 capacity provision).

Public comment is requested on whether or not an engineer's services are needed to design all components not presently included in the tables and guidelines of Appendix A. OSHA also requests information on the additional criteria which should be added to Appendix A in order to provide complete tables and guidelines.

In addition, OSHA requests public comment on whether or not there are other types of scaffolds, or conditions (such as evaluating the support system for interior hung scaffolds), in addition to those already covered, where it would be appropriate to require the services of an engineer. If the services of an engineer are not necessary, what are the training and experience factors an individual must have before being allowed to design a scaffold system?

20. Paragraph (b)(8)(ii) of § 1915.252 requires that counterweights be made of non-flowable solid materials. Should OSHA also require that counterweights be designed for no other purpose than to counterweigh the system, thereby prohibiting the use of materials, such as concrete masonry units, boxes, etc., as counterweights? Comments should include accident and cost data.

21. Paragraph (b)(32) of § 1915.252 requires manually-powered hoists to be built such that they require a positive crank force to lower the scaffold. This would eliminate the dangerous condition of "free-running" hoists during descents. Public comment is requested on the need for this requirement.

22. Public comment is requested on whether landing platforms should be required at 30-foot maximum intervals as required by § 1910.29(a)(3)(viii), or at 20-foot maximum intervals as required by proposed rule § 1915.252(c)(2)(iii).

23. Paragraph (d)(13) of § 1915.252 prohibits the use of ladders or makeshift devices to raise the working level of employees. Public comment is requested on the need for this requirement.

24. Paragraph (n)(1) of § 1915.253 would limit the number of platforms which may be used on catenary scaffolds. This is the same rule as in ANSI A10.8-1977, paragraph 22.4. The intent is to prohibit the overloading of catenary support systems. However, whereas the ANSI provision also sets forth maximum load criteria, the proposed OSHA provision does not.

This is to keep the proposed provisions performance-oriented, and is consistent with the approach used for all other types of scaffolds. However, public comment is requested as to what other criteria, if any, should be set forth.

25. Paragraph (d)(10) of § 1915.252 requires shields to be used when heat-producing processes are used on suspension scaffolds. Public comment is requested on what criteria, if any, should be set forth for such shields.

26. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, proposed § 1915.252(c)(7) restricts direct access to scaffolds to those situations where the open distance between scaffold and building is not more than 14 inches horizontally and 24 inches vertically; and proposed § 1915.252(c)(2)(iv) requires rest platforms at 20-foot maximum intervals. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "direct access shall be used only where the building and the scaffold are close enough to provide safe access;" or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above, and those for guardrail heights, minimum platform widths, and similar requirements) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employees and employers about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and

situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a nonmandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

27. Specific provisions for crane and derrick suspended personnel platforms are presently set forth in § 1915.71(b) (9) and (10) and are repropounded at § 1915.253(t) (1) and (2). These provisions address the topics of platform stability and attachment to the hook. In light of the July 10, 1987 accident at San Diego, California, in which six lives were lost, OSHA requests public comment on the adequacy of these two provisions.

Specifically, OSHA requests comments, including feasibility, cost, and related injury data, on whether the existing regulations and the proposed rules listed later in the document should be replaced by the following:

Section 1915.251 Scope application and definitions applicable to this subpart.

"Hoist" (or "hoisting") means all crane or derrick functions such as lowering, lifting, swinging, booming in and out or up and down, or suspending a personnel platform.

"Runway" means a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the crane being used to lift and travel with a crane suspended platform. An existing surface may be used as long as it meets these criteria.

Section 1915.252 General requirements.

The following requirements apply to all scaffolds (except crane or derrick suspended personnel platforms which are covered in § 1915.254) except as noted.

Section 1915.254 Crane or derrick suspended personnel platforms.

(a) *General requirements.* The personnel platform shall be conspicuously posted with a plate or other permanent marking which indicates the weight of the platform and its rated load capacity or maximum intended load.

(b) *Design.* (1) The personnel platform and suspension system shall be designed by a qualified engineer or a

qualified person competent in structural design.

(2) The suspension system shall be designed to minimize tipping of the platform due to movement of employees occupying the platform.

(c) *Capacity.* (1) Load lines shall be capable of supporting, without failure, at least seven times the maximum intended load, except that where rotation resistant rope is used, the lines shall be capable of supporting without failure, at least ten times the maximum intended load.

(2) Wire rope, shackles, rings, master links, and other rigging hardware must be capable of supporting, without failure, at least five times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings shall be capable of supporting without failure at least ten times the maximum intended load.

(3) The personnel platform itself, except the guardrail system and body belt/harness anchorages, shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load. Criteria for guardrail systems and body belt/harness anchorages are contained in other Subparts of this part.

(d) *Crane and derrick criteria.* In addition to the requirements for cranes and derricks set forth in other subparts, cranes and derricks used to support personnel platforms shall conform to the following provisions:

(1) Cranes and derricks with variable angle booms shall be equipped with a boom angle indicator, readily visible to the operator.

(2) Cranes with telescoping booms shall be equipped with a device to indicate clearly to the operator, at all times, the boom's extended length, or an accurate determination of the load radius to be used during the lift shall be made prior to hoisting personnel.

(3) A positive acting device shall be used which prevents contact between the load block or overhaul ball and the boom tip (anti-two-blocking device), or a system shall be used which deactivates the hoisting action before damage occurs in the event of a two-blocking situation (two block damage prevention feature).

(4) The load line hoist drum shall have a system or device on the power train, other than the load hoist brake, which regulates the lowering rate of speed of the hoist mechanism (controlled load lowering.)

(5) Hooks on overhaul ball assemblies, lower load blocks, or other attachment assemblies shall be of a type that can be closed and locked,

eliminating the hook throat opening. Alternatively, an alloy anchor type shackle with a bolt, nut and retaining pin may be used.

(e) *Platform criteria.* (1) Each personnel platform shall be equipped with a Type I guardrail system that conforms to the criteria set forth in § 1915.252(e)(4). In addition, the platform shall be enclosed from the toeboard to midrail with either solid construction or expanded metal having openings no greater than one-half inch (1.27 cm).

(2) A grab rail shall be installed inside the entire perimeter of the personnel platform.

(3) Access gates, if installed, shall not swing outward during hoisting.

(4) Access gates, including sliding or folding gates, shall be equipped with a restraining device to prevent accidental opening.

(5) Headroom shall be provided which allows employees to stand upright in the platform.

(6) In addition to the use of hard hats, employees shall be protected by overhead protection on the personnel platform when employees are exposed to falling objects.

(7) All rough edges exposed to contact by employees shall be surfaced or smoothed in order to prevent injury to employees from punctures or lacerations.

(8) All welding of the personnel platform and its components shall be performed by a qualified welder familiar with the weld grades, types and material specified in the platform design.

(9) When a wire rope bridle is used to connect the personnel platform to the load line, each bridle leg shall be connected to a master link or shackle in such a manner to ensure that the load is evenly divided among the bridle legs.

(10) All eyes in wire rope slings shall be fabricated with thimbles.

(f) *Trial lift, inspection, and proof testing.* (1) A trial lift with the unoccupied personnel platform loaded at least to the anticipated lightweight shall be made from ground level, or any other location where employees will enter the platform, to each location at which the personnel platform is to be positioned. This trial lift shall be performed immediately prior to placing personnel in the platform. The operator shall determine that all systems, controls, and safety devices are activated and functioning properly; that no interferences exist; and that all configurations necessary to reach those work locations will allow the operator to remain under the 50 percent limit of the hoist's rated capacity. Materials and tools to be used during the actual lift can

be loaded in the platform, as provided in paragraphs (h)(4) and (5) of this section for the trial lift. A single trial lift may be performed at one time for all locations that are to be reached from a single set up position.

(2) The trial lift shall be repeated prior to hoisting employees whenever the crane or derrick is moved and set up in a new location or returned to a previously used location. Additionally, the trial lift shall be repeated when the lift route is changed unless the operator determines that the route change is not significant [i.e., the route change would not affect the safety of hoisted employees.]

(3) After the trial lift and just prior to hoisting personnel, the platform shall be hoisted a few inches and inspected to ensure that it is secure and properly balanced.

(4) A visual inspection of the crane or derrick, rigging, personnel platform, and the crane or derrick base support or ground shall be conducted by a competent person immediately after the trial lift to determine whether the testing has exposed any defect or produced any adverse effect upon any component or structure.

(5) Any defects found during inspections which create a safety hazard shall be corrected before hoisting personnel.

(6) At each job site, prior to hoisting employees on the personnel platform, and after any repair or modification, the platform and rigging shall be proof tested to 125 percent of the platform's rated capacity by holding it in a suspended position for five minutes with the test load evenly distributed on the platform (this may be done concurrently with the trial lift). After proof testing, a capable person shall inspect the platform and rigging. Any deficiencies found shall be corrected and another proof test shall be conducted. Personnel hoisting shall not be conducted until the proof testing requirements are satisfied.

(g) *Pre-lift meeting.* (1) A meeting attended by the crane or derrick operator, signal person(s) (if necessary for the lift), employee(s) to be lifted, and the person responsible for the task to be performed shall be held to review the appropriate requirements of § 1915.254 and the procedures to be followed.

(2) This meeting shall be held prior to the trial lift at each new work location, and shall be repeated for any employees newly assigned to the operation.

(h) *Personnel platform loading.* (1) The personnel platform shall not be loaded in excess of its rated load capacity. When a personnel platform does not have a rated load capacity, then the personnel platform shall not be

loaded in excess of its maximum intended load.

(2) The number of employees occupying the personnel platform shall not exceed the number required for the work being performed.

(3) Personnel platforms shall be used only for employees, their tools, and the materials necessary to do their work, and shall not be used to hoist only materials or tools when not hoisting personnel.

(4) Materials and tools for use during a personnel lift shall be secured to prevent displacement.

(5) Materials and tools for use during a personnel lift shall be evenly distributed within the confines of the platform while the platform is suspended.

(6) The total weight of the loaded personnel platform and related rigging shall not exceed 50 percent of the rated capacity for the radius and configuration of the crane or derrick.

(i) *Use and operational criteria.* (1) The use of machines having live booms (booms in which lowering is controlled by a brake without aid from other devices which slow the lowering speeds) is prohibited.

(2) Bridles and associated rigging for attaching the personnel platform to the hoist line shall be used only for the platform and the necessary employees, their tools and the materials necessary to do their work, and shall not be used for any other purpose when not hoisting personnel.

(3) The crane shall be uniformly level within one percent of level grade and located on firm footing. Cranes equipped with outriggers shall have them all fully deployed following manufacturer's specifications, insofar as applicable, when hoisting employees.

(4) Hoisting of the personnel platform shall be performed in a slow, controlled, cautious manner with no sudden movements of the crane or derrick, or the platform.

(5) Load and boom hoist drum brakes, swing brakes, and locking devices such as pawls or dogs shall be engaged when the occupied personnel platform is in a stationary working position.

(6) Free fall is prohibited.

(7) Employees shall not be hoisted unless the following conditions are determined to exist:

(i) Hoist ropes shall be free of kinks;

(ii) Multiple part lines shall not be twisted around each other;

(iii) The primary attachment shall be centered over the platform and

(iv) The hoisting system shall be inspected if the load rope is slack to ensure all ropes are properly seated on drums and in sheaves.

(8) Employees shall keep all parts of the body inside the platform during raising, lowering, and positioning. This provision does not apply to an occupant of the platform performing the duties of a signal person.

(9) Before employees exit or enter a hoisted personnel platform that is not landed, the platform shall be secured to the structure where the work is to be performed, unless securing to the structure creates an unsafe situation.

(10) Tag lines shall be used unless their use creates an unsafe condition.

(11) The crane or derrick operator shall remain at the controls at all times when the crane engine is running and the platform is occupied.

(12) Hoisting of employees shall be promptly discontinued upon indication of any dangerous weather conditions or other impending danger.

(13) Employees being hoisted shall remain in continuous sight of and in direct communication with the operator or signal person. In those situations where direct visual contact with the operator is not possible and the use of a signal person would create a greater hazard for that person, direct communication alone such as by radio may be used.

(14) Except over water, employees occupying the personnel platform shall use a body belt/harness system with lanyard appropriately attached to the lower load block or overhaul ball, or to a structural member within the personnel platform capable of supporting a fall impact for employees using the anchorage.

(15) No lifts shall be made on another of the crane's or derrick's loadlines while personnel are suspended on a platform.

(16) Hoisting of employees while the crane is traveling is prohibited, except for portal, tower and locomotive cranes, or where the employer demonstrates that there is no less hazardous way to perform the work.

(17) Under any circumstances where a crane would travel while hoisting personnel, the employer shall implement the following procedures to safeguard employees:

(i) Crane travel shall be restricted to a fixed track or runway.

(ii) Travel is limited to the load radius of the boom used during the lift.

(iii) The boom must be parallel to the direction of travel.

(iv) A complete trial run shall be performed to test the route of travel before employees are allowed to occupy the platform. This trial run can be performed at the same time as the trial

lift required by paragraph (f)(1) of this section which tests the route of the lift.

(v) If travel is done with a rubber tired carrier, the condition and air pressure of the tires shall be checked. The chart capacity for lifts on rubber shall be used for application of the 50 percent reduction. Notwithstanding paragraph (i)(3) of this section, outriggers may be partially retracted as necessary for travel.

III. References

1. American National Standard ANSI A10.8-1977, "Safety Requirements for Scaffolding," American National Standards Institute, New York.
2. Wang Associates, Inc., "Study of Distance Between Structural Wall and Scaffold," June 13, 1979, Unpublished.
3. Chaffin and Stobbe, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR Part 1910, Subpart D," University of Michigan, September 1979.
4. U.S. Department of Labor, Bureau of Labor Statistics, "Injuries Resulting From Falls From Elevations," Bulletin 2195, June 1984.
5. Fattal, Cattaneo, Turner, and Robinson, "Personnel Guardrails for the Prevention of Occupational Accidents," Center for Building Technology, Institute for Applied Technology, National Bureau of Standards, Washington, D.C., July 1976 (NBSIR 76-1132).
6. Fattal and Cattaneo, "Investigation of Guardrails for the Protection of Employees from Occupational Hazards," Center for Building Technology, Institute for Applied Technology, National Bureau of Standards, Washington, D.C., July 1976 (NBSIR 76-1139).
7. Chaffin, Miodonski, Stobbe, Boydston, and Armstrong, "An Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surface," Department of Industrial and Operations Engineering College of Engineering, the University of Michigan, March 1978.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed revision would not be a "major" action. The expected annualized costs of full compliance would be about \$48,000.

Background

Under Executive Order 12291, OSHA is required, in general, to submit any Notice of Proposed Rulemaking (NPRM) for "all rules other than major rules" to

the Director of the Office of Management and Budget (OMB) at least 10 days prior to publication in the *Federal Register*.

In light of the data currently available to OSHA, the economic impact estimates presented in this preamble are rough estimates which are likely to be refined as OSHA receives additional information.

OSHA solicits further comments on the estimates presented in this preamble and those comments will be addressed and incorporated in the Regulatory Impact Assessment (RIA) for the final rule.

Data Sources

The primary source for this section is the November 1985, Draft Final Report by CONSAD Research Corporation entitled, "Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing." In addition, OSHA also used an October 1984 report by Main Hurdman/KMG entitled, "Profile of the Shipbuilding and Repairing Industry."

Industry Profile

The entire shipbuilding, ship repairing, and shipbreaking industries would be affected by the proposed consolidation of the scaffold sections of the existing Part 1915, Subpart E, and the existing Part 1910, Subpart D, because scaffolds are used extensively in all shipyards. In recent years, shipyards have not prospered as an industry. By way of illustration, there were about 305 shipyards operating in 1986 which is fewer than half of the 687 shipyards active in 1982. Another illustration is that there were orders for 69 merchant vessels (1.82 million tons) in U.S. shipyards in 1980 but no new orders for merchant vessels since 1985. Although this loss of business has been partially offset by the increase in the U.S. Navy's demands for ships, the decline in the demand for commercial ships will likely generate a further decline in the number of active shipyards.

Population-at-Risk

OSHA has estimated that approximately 13 percent of shipyard employees frequently work on scaffolds. The actual number of these employees will depend upon the level of shipyard work. For example, shipyards employed 177,300 workers in 1980 and about 136,300 workers in 1986. Thus, the number of workers at risk from injuries associated with work on scaffolds would have been about 23,000 in 1980 and about 17,700 in 1986. Consequently, given the potential for large changes in the demand for this industry's product,

OSHA has estimated that the population-at-risk would be between 17,700 and 23,000 employees.

Risk of Fatality or Injury

OSHA has estimated that the annual number of injuries in shipyards due to falls from scaffolds was between 240 and 385 between 1981 and 1986. Of these injuries, 120 to 220 were lost workday injuries. As the average number of lost workdays per lost workday injury was 31.8, OSHA has estimated that the annual number of lost workdays in shipyards due to falls from scaffolds would be between 3,815 days and 6,995 days.

In addition, OSHA has determined that there would be between one and two annual fatalities in shipyards associated with falls from scaffolds.

Feasibility, Benefits, and Costs

OSHA has determined that this proposed standard would be technologically feasible because it would permit the use of existing and readily available technology and equipment.

There are two potential sources of benefits from this proposed standard. The first source is the benefits that would accrue to those workers who are at risk from current practices involving scaffolds in shipyards. OSHA believes that the proposed consolidation of Parts 1910 and 1915 would likely lead to an increase in future compliance levels because consolidating two sets of scaffold requirements into one set would clarify the rules. In addition, the proposal substitutes performance language for much of the existing specification language. Consequently, it could make compliance less costly, while maintaining employee safety. Thus, the proposed consolidation may lead to an increase in compliance which, in turn, may lead to an increase in employee safety on scaffolds.

The second source is the benefits and decreased costs that should accrue to those employers who would be allowed to use certain safety systems and equipment that are not allowed by the existing specification requirements but would provide the same level of employee safety as that generated by the specifications. The use of these systems and equipment would allow employers to provide the necessary level of safety to their employees at less cost than is possible under the existing standards.

OSHA does not have any quantitative estimates of these potential benefits and is requesting information and comments on this issue. As this is a Preliminary

Regulatory Impact Assessment (PRIA), all comments will be carefully analyzed by OSHA for incorporation into the RIA for the final rule.

The basis of the estimated costs of compliance with the proposed standard is the CONSAD Report. In order to obtain this information, CONSAD circulated copies of the draft proposed standards to the two major industry trade associations and to individual shipbuilders. CONSAD then employed telephone questionnaires and site visits to elicit information concerning the potential economic impact of the provisions contained in the draft proposed consolidated standard. The information was used by CONSAD to develop its estimates of the costs of compliance and those costs have been adopted by OSHA as the expected costs of compliance with the proposed standards.

Based on the CONSAD report, OSHA has determined that there are three provisions that would generate costs of compliance. The first provision would require that the front edge of all scaffold platforms be no more than 14 inches from the face of the vessel or structure unless guardrails or body belt systems are used. This provision would require an increased use of body belts for employees working on hulls or other curved sections of structures. The second provision would prohibit the use of ladders on top of scaffolds. This provision would require that some additional scaffold be erected to reach a higher level rather than using a ladder to reach the desired height. The third provision would prohibit workers from riding on mobile scaffolds unless the surface on which the scaffold is moving is level and free of pits, holes, and obstructions. This provision would involve some productivity losses because the employee would have to descend from the mobile scaffold before it could be moved.

Using the baseline of existing industry practice, OSHA has estimated the annualized costs of compliance with the proposed consolidation to be about \$48,000 for those three provisions. Nevertheless, as previously mentioned, this is a preliminary RIA and OSHA invites public comment concerning this estimate. Any comment received will be carefully analyzed by OSHA for incorporation into the RIA for this final rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant Secretary has preliminarily certified that the proposal would not have a significant impact upon a substantial

number of small entities. OSHA invites public comment concerning this certification.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than on large entities, thereby putting small entities at a competitive disadvantage.

The proposed standard, however, has no changes that would require significant capital expenditures. Furthermore, as these proposed provisions are more performance-oriented than specification-oriented, small entities can use cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance with the proposed standard primarily depend upon the amount of scaffold footage and upon the number of employees, both of which typically depend upon the size of the firm. There are, however, some economies of scale in compliance and the costs of compliance expressed as a percentage of total revenues would be slightly larger for very small firms (fewer than 50 employees) than for very large firms (greater than 1,000 employees). Nevertheless, these compliance costs would be a minimal component of the overall cost of the shipyard production. As a result, this proposed standard would not put small entities at a competitive disadvantage relative to large entities.

Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in both the Preliminary Regulatory Impact Assessment and the Regulatory Flexibility Certification.

V. Environment Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*),

the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment. The proposal also contains language, definition, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to Subpart B, Section 11.10, of the DOL NEPA regulations.

VI. Recordkeeping

This proposal contains no recordkeeping requirements.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 27, 1989, and submitted in quadruplicate to the Docket Office, Docket S-047, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSHA Act (29 U.S.C. 655) and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing request should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections and hearing requests must include the name, and address of the individual or organization making the objection or request;
2. The objections and hearing requests must be postmarked by February 27, 1989.
3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken or about which the hearing request is made, and must state the grounds therefor;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan States

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective as" the revised Federal standard. Currently, five States (California, Minnesota, Oregon, Vermont and Washington) with their own State plans cover private sector on-shore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut¹, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York,¹ North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All States with State plans must also extend coverage to State and local government employees engaged in maritime activities.)

List of Subjects in 29 CFR Part 1915

Guardrail systems, Marine safety, Occupational safety and health, Safety,

Ship repair, Shipyard employment, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1915 as set forth below.

Signed at Washington, DC, this 17th day of November, 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The authority citation for Part 1915 would continue to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. 29 CFR Part 1915 would be amended by adding a new Subpart N to read as follows:

Subpart N—Scaffolds

Sec.

1915.251 Scope, application and definitions applicable to this subpart.

1915.252 General requirements.

1915.253 Additional requirements applicable to specific types of scaffolds.

Appendix A to Subpart N—Scaffold Specifications

Subpart N—Scaffolds

§ 1915.251 Scope, application and definitions applicable to this subpart

(a) *Scope and application.* (1) This subpart applies to all scaffolds used in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR Part 1926.

(2) The provisions of 29 CFR 1910.26 and 1910.29 do not apply to shipyard workplaces and operations.

(b) *Definitions.* "Adjustable suspension scaffold" means a suspension scaffold equipped with hoists that can be operated by employees on the scaffold.

"Bearer" means a horizontal transverse scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

"Boatswain's chair" means a single point adjustable suspension scaffold consisting of a seat or sling designed to accommodate one employee in a sitting position.

"Body belt (safety belt)" means a strap with means for securing about the waist or body and for attaching to a lanyard, lifeline, or deceleration device.

"Body belt/harness system (personal fall arrest system)" means a combination of body belt, or body harness, and lanyard, deceleration device, lifeline, and point of anchorage.

"Body harness" means a design of straps which is secured about the employee in a manner to distribute the arresting forces over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

"Brace" means a tie that holds one scaffold member in a fixed position with respect to another member. "Brace" also means a rigid type connection holding a scaffold to a vessel, vessel section, building, or structure.

"Bracket scaffold" means a supported scaffold consisting of a platform supported by brackets attached to a vessel, vessel section, building, or structural wall.

"Capable person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

"Catenary scaffold" means a suspension scaffold consisting of a platform fastened to two essentially horizontal and parallel ropes, which are secured to structural members.

"Cleat" means structural members used at the ends of platform units to prevent the units from slipping off their supports. Cleats are also used to provide footing on sloped surfaces such as crawling boards.

"Coupler" means a device for locking together the component tubes of a tube and coupler scaffold.

"Crawling board (chicken ladder)" means a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.

"Deceleration device" means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard,

¹ Plan covers only State and local government employees.

and automatic self-retracting lifeline, which serves to dissipate more energy during a fall arrest than does a standard line or strap webbing lanyard.

"Double pole (independent pole) scaffold" means a supported scaffold consisting of platforms resting on cross beams supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

"Dropline" means a suspended vertical line, independent of the work platform, for direct attachment to a worker's body belt, body harness, lanyard, or deceleration device.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Exposed power lines" means electrical power lines which are accessible to employees and not shielded from contact. Such lines do not include extension cords or power tool cords.

"Fabricated decking and planking" means manufactured platform units made of wood (including laminated wood and solid sawn wood planks), metal or other materials.

"Fabricated frame scaffold (tubular welded frame scaffold)" means a supported or suspended scaffold consisting of a platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Float (ship) scaffold" means a suspension scaffold consisting of a braced platform resting upon two parallel bearers and hung from overhead supports by ropes of fixed length.

"Guardrail system" means a vertical barrier, normally consisting of, but not limited to, an assembly of top rails, midrails, and posts, erected to prevent employees from falling off a scaffold platform or walkway to a lower level. Type I guardrail systems are those systems capable of providing adequate fall protection without the use of body belts. Type II guardrail systems are those systems which serve as scaffold edge delineators, restrain movement, provide handholds, prevent misstepping, and which must be supplemented by body belt systems to provide adequate fall protection.

"Hoist" means a mechanical device to raise or lower a suspended scaffold. It can be either manually or mechanically power-operated.

"Horse scaffold" means a supported scaffold consisting of a platform supported by construction horses.

"Independent pole scaffold" (See "Double pole scaffold.")

"Interior hung scaffold" means a suspension scaffold consisting of a platform suspended from the ceiling, overhead, or roof structure by fixed length supports.

"Ladder jack scaffold" means a supported scaffold consisting of a platform supported by brackets attached to ladders.

"Ladder stand" means a mobile, fixed-size, self-supporting ladder consisting of a wide flat tread ladder in the form of stairs.

"Lean-to scaffold" means a supported scaffold which is kept erect by tilting it toward and resting it against a vessel, vessel section, building, or structure.

"Ledger" means a horizontal scaffold member upon which bearers rest. It is the longitudinal member which joins scaffold uprights, posts, poles, and similar members.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, decks, flats, docks, floors, roofs, ramps, gangways, grates, piers, wharves, runways, excavations, pits, tanks, materials, water, equipment, and other surfaces.

"Maximum intended load" means the total load of all employees, equipment, tools, materials, transmitted loads, wind loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time.

"Mechanically-powered hoist" means a hoist which is powered by other than human energy.

"Mobile scaffold" means a powered or unpowered, portable, caster or wheel-mounted supported scaffold. Such scaffolds do not include crane or derrick suspended personnel platforms.

"Multi-level suspended scaffold" means a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels supported by common stirrups.

"Multi-point adjustable suspension scaffold" means a suspension scaffold consisting of a platform or platforms suspended by more than two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

"Needle beam scaffold" means a suspension scaffold consisting of a platform supported by needle beams.

"Open sides and ends" means the edges of a platform that are more than 14 inches (36 cm) away horizontally from a sturdy, continuous, vertical surface (such as a vessel's hull,

bulkhead, or building wall) or a sturdy, continuous horizontal surface (such as a floor or deck), or a point of access.

"Outrigger" means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide greater stability for the scaffold.

"Outrigger beam" means the structural member of a suspension scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the vessel, vessel section, building, or structure.

"Outrigger scaffold" means a supported scaffold consisting of a platform supported by outrigger beams (thrustouts) projecting beyond the wall or face of the vessel, vessel section, building, or structure, the inboard ends of which are secured inside the building or structure.

"Platform" means the horizontal working surface of a scaffold.

"Platform unit" means the individual wood planks, fabricated planks, fabricated decks, and fabricated platforms which comprise the platforms and walkways of a scaffold.

"Pole scaffold" (See definitions for "Single-pole scaffold" and "Double (independent) pole scaffold.")

"Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve safety problems relating to the subject matter, the work, or the project.

"Runner" means the lengthwise horizontal bracing or bearing member which supports bearers on tube and coupler scaffolds.

"Scaffold" means any temporary elevated platform (supported or suspended), and its supporting structure, used for supporting employees or materials or both.

"Self-contained adjustable scaffold" means a combination supported and suspension scaffold consisting of an adjustable platform(s) mounted on an independent supporting frame(s) not a part of the object being worked on, and which is equipped with a means to permit the raising and lowering of the platform(s) to desired work levels. Such systems include rolling roof rigs and rolling outrigger systems.

"Shore scaffold" means a supported scaffold which is kept erect by placing it against a vessel, vessel section, building, or structure and holding it in place with props.

"Single-point adjustable suspension scaffold" means a suspension scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels. Such scaffolds do not include crane or derrick suspended personnel platforms.

"Single-pole scaffold" means a supported scaffold consisting of platforms resting on bearers, the outside ends of which are supported on ledgers secured to a single row of posts or uprights, and the inner ends of which are supported on or in a vessel, vessel section, building, or structure.

"Step, platform, and trestle ladder scaffold" means a supported scaffold consisting of a platform supported directly on the rungs of step ladders or trestle ladders.

"Supported scaffold" means one or more working platforms supported by outrigger beams, brackets, poles, legs, uprights, posts, frames, or similar rigid support.

"Suspension scaffold" means one or more working platforms suspended by ropes or other non-rigid means from an overhead structure(s).

"Trolley line" means means a horizontal line for direct attachment to a worker's body belt, lanyard, or deceleration device.

"Tube and coupler scaffold (independent pole metal scaffold)" means a supported or suspended scaffold consisting of platforms supported by individual pieces of tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

"Tubular welded frame scaffold" (See definition for "fabricated frame scaffold.")

"Two-point suspension scaffold (swing stage) (painters' suspended scaffolds)" means a suspension scaffold consisting of a platform supported by hangers (stirrups) suspended by two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

"Unstable objects" means those items which do not properly distribute the loads imposed on them and which, therefore, do not constitute a proper base support for scaffolds, platform units, or employees. Examples of such objects include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

"Vertical pickup" means a rope used to support the horizontal rope in catenary scaffolds.

"Walkway" means a portion of a scaffold platform used only for access and not as a work level.

"Window jack scaffold" means a supported scaffold consisting of a platform supported by a bracket or jack which projects through a window opening.

"Worklevel" means an elevated platform used for supporting employees and their materials, where work activities are performed.

§ 1915.252 General requirements.

The following requirements apply to all scaffolds, except as indicated:

(a) *Capacity.* Scaffold components and connections shall have the following capacities:

(1) Each scaffold and scaffold component, except suspension ropes and guardrail systems, shall be capable of supporting, without failure, its own weight and a least four times the maximum intended load to be applied or transmitted to that component. The criteria for suspension ropes is set forth in paragraph (a)(4) of this section, and the criteria for guardrail systems is set forth in paragraph (e) of this section.

(2) Direct connections (to roofs, floors, hulls, and decks) and counterweights, used to resist the tipping forces on suspension scaffolds, shall be capable of providing a resisting force of at least four times the tipping force.

(3) Each suspension rope shall be capable of supporting, without failure, at least six times the maximum intended load applied or transmitted to that rope.

(4) Suspension ropes shall also meet the following requirements (criteria for ropes supporting boatswains' chairs are set forth in § 1915.253(k)):

(i) Ropes supporting adjustable suspension scaffolds shall be of a diameter large enough to provide sufficient surface area for the functioning of brake and hoist mechanisms;

(ii) Ropes supporting catenary scaffolds shall be equivalent in strength to at least one-half (1/2) inch (1.3 cm) diameter improved plow steel wire ropes;

(iii) Ropes supporting float (ship) scaffolds and needle beam scaffolds shall be equivalent in strength to at least one inch (2.5 cm) diameter first grade manila ropes.

(b) *Construction.* (1) Platforms, except those used as walkways, on all working levels on all scaffolds shall be fully planked or decked with platform units between the front uprights and the guardrail supports as follows.

(i) Platform units shall be placed as close as possible to adjacent units. Any space between adjacent units shall be

no more than one inch (2.5 cm) wide except as necessary to fit around uprights when side brackets are used to extend the width of the platform.

(ii) Where full planking or decking cannot be obtained using standard width units, the platform shall be planked or decked as fully as possible; however, the remaining open space between the platform and guardrail supports shall not exceed nine and one-half inches (24.1 cm).

(2) All scaffold platforms and walkways shall be at least 18 inches (46 cm) wide except ladder jack scaffolds shall be a minimum of 12 inches (30 cm) wide, and boatswains' chairs may be any size.

(3) Emergency descent devices shall not be used as working platforms.

(4) The front edge of all platforms, except those on outrigger scaffolds, shall be positioned not more than 14 inches (36 cm) from the face of the vessel, vessel section, building, or structure being worked on, unless Type I guardrails are erected along the open edge or body belt/harness systems are used to protect employees from falling. The maximum distance for outrigger scaffolds shall be three inches (8 cm).

(5) Each end of a platform unit, unless cleated or otherwise restrained by hooks or equivalent means, shall extend over its support not less than six inches (15 cm).

(6) Each end of a platform unit shall not extend over its support more than 18 inches (46 cm), unless the unit is designed, capable, and installed to support employees without tipping or is guarded to prevent access of employees to the cantilevered end.

(7) On scaffolds where platform units are abutted to create a long platform, each abutted end shall rest on a separate support, butt plate, or equivalent means of support.

(8) On scaffolds where platform units are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) long unless the platform units are nailed together or otherwise restrained to prevent movement.

(9) At all points of a scaffold where the platform changes direction, such as turning a corner, any platform unit that rests on a bearer at an angle other than a right angle shall be laid first, and platform units which rest at right angles over the same bearer shall be laid second, on top of the first units.

(10) Wood platform units shall not be covered with opaque finishes, except that unit edges may be covered or marked for purposes of identification, and units used in reactor plants may be

coated where necessary to prevent contamination. Platform units may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes; however, the coating may not obscure the top or bottom wood surfaces.

(11) Scaffold components manufactured by different manufacturers shall not be intermixed unless the component parts fit together without force. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless the resulting scaffold is determined by a capable person to be structurally sound.

(12) Scaffold components made of dissimilar metals shall not be used together unless a capable person has determined that galvanic action will not reduce the strength of any component to a level below that required by § 1915.252(a)(1).

(13) Supported scaffolds with a height to base width (including outrigger supports, if used) ratio of more than four to one shall be restrained from tipping by guying, tying, bracing, or equivalent means, as follows:

(i) Guys, braces, or ties shall be provided at heights not to exceed the first multiple in height of the four to one ratio and at intervals not to exceed 20 feet (6.1 m) thereafter.

(ii) Guys, ties and braces shall be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end towards the other).

(14) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates and mud sills or other adequate firm foundation.

(i) Such footings shall be level, sound, rigid, and capable of supporting the scaffold in a loaded condition without settling or displacement.

(ii) Unstable objects shall not be used to support scaffolds or platform units.

(iii) Unstable objects shall not be used as working platforms.

(15) Supported scaffold poles, legs, posts, frames, and uprights shall be plumb and braced to prevent swaying and displacement.

(16) All suspension scaffold support devices such as outrigger beams, cornice hooks, parapet clamps, and similar devices, shall rest on surfaces capable of supporting the reaction forces imposed by the scaffold hoist operating at its maximum rated load.

(17) Suspension scaffold outrigger beams, when used, shall be made of structural metal and shall be restrained to prevent movement.

(18) The inboard ends of suspension scaffold outrigger beams shall be

stabilized by bolts or other direct connections to the floor, roof, or deck, or they shall have their inboard ends stabilized by counterweights.

(i) Before use, direct connections shall be evaluated by a capable person who shall certify, based on the evaluation, that the supporting surfaces are capable of supporting the loads to be imposed.

(ii) Counterweights shall be made of non-flowable solid material.

(iii) Counterweights shall be secured by mechanical means to the outrigger beams.

(iv) Counterweights shall be removed from a scaffold until the scaffold is disassembled.

(v) Outrigger beams shall be secured by tiebacks equivalent in strength to the suspension ropes.

(vi) Tiebacks shall be secured to a structurally sound portion of the vessel, vessel section, building, or structure.

(vii) Tiebacks shall be installed parallel to the centerline of the beam.

(19) Suspension scaffold outrigger beams shall be:

(i) Provided with stop bolts or shackles at both ends;

(ii) Securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams;

(iii) Installed with all bearing supports perpendicular to the beam center line;

(iv) Set and maintained with the web in a vertical position; and

(v) Where a single outrigger beam is used, the steel shackles or clevises with which the wire ropes are attached to the outrigger beams, shall be placed directly over the hoisting machines.

(20) Suspension scaffold support devices such as cornice hooks, roof hooks, roof irons, parapet clamps, or similar devices shall be:

(i) Made of mild steel, wrought iron, or materials of equivalent strength;

(ii) Supported by bearing blocks; and

(iii) Secured against movement by tiebacks installed at right angles to the face of the building, structure, vessel, or vessel section, whenever possible, and secured to a structurally sound portion of the building, structure, vessel, or vessel section.

(iv) Tiebacks shall be equivalent in strength to the hoisting rope.

(21) When winding drum hoists are used on a suspension scaffold, they shall contain not less than four wraps of the suspension rope at the lowest point of scaffold travel. When other types of hoists are used, the suspension ropes shall be of such length that the scaffold can be lowered to the level below without the rope end passing through the hoist, or the rope end shall be configured or provided with means to

prevent the end from passing through the hoist.

(22) The use of repaired wire rope as suspension rope is prohibited.

(23) Wire suspension ropes shall not be joined together except by eyesplicing with shackles or coverplates and bolts.

(24) The load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eyesplicing or equivalent means.

(25) Defective or damaged ropes shall not be used as suspension ropes or drop lines.

(26) Swaged attachments or spliced eyes on wire suspension ropes shall not be used unless they are made by the wire rope manufacturer or a qualified person.

(27) When wire rope clips are used on suspension scaffolds, they shall be retightened after initial loading and shall be inspected and retightened periodically thereafter.

(28) Suspension scaffold mechanically-powered hoists and manually-powered hoists shall be of a type tested and listed by a nationally recognized testing laboratory.

(29) Gasoline-powered hoists shall not be used on suspension scaffolds.

(30) Gears and brakes of mechanically-power-operated hoists used on suspension scaffolds shall be enclosed.

(31) In addition to the normal operating brake, suspension scaffold hoists shall have a braking device or locking pawl which engages automatically when the normal speed of descent of the hoist is exceeded.

(32) Manually-powered hoists shall not be capable of lowering scaffold platforms without a positive crank force.

(c) Access. This paragraph (c) does not apply to employees performing scaffold erection and dismantling operations.

(1) Access to and between scaffold platforms more than two feet (0.6 m) above or below the point of access shall be by portable ladders, hook-on ladders, attachable ladders, Jacob's ladders, stairway-type ladders (such as ladder stands), ramps, gangways, runways, integral prefabricated scaffold rungs, or equivalent means, or by direct access from another scaffold, structure, personnel hoist, or similar surface. Crossbraces shall not be used as a means of access.

(2) Portable, hook-on, attachable ladders:

(Additional requirements for the proper construction and use of portable ladders are contained in 29 CFR Part 1915, Subpart E—Access and Egress.)

(i) Portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold;

(ii) Portable, hook-on, and attachable ladders shall be positioned such that employees do not have to step more than one foot (31 cm) from the ladder to any intermediate landing or platform.

(iii) Hook-on and attachable ladders shall be positioned such that their bottom rung is not more than 24 inches (61 cm) above the scaffold supporting level;

(iv) Hook-on and attachable ladders shall be provided with rest platforms at 20 foot (6.0 m) maximum vertical intervals;

(v) Hook-on and attachable ladders shall be specifically designed for use with the manufactured types of scaffolds to be used;

(vi) Hook-on and attachable ladders shall have a minimum rung length of 11½ inches (29 cm); and

(vii) Hook-on and attachable ladders shall have a maximum spacing between rungs of 12 inches (30 cm).

(3) Stairway-type ladders shall:

(i) Be positioned such that their bottom step is not more than 24 inches (61 cm) above the scaffold supporting level;

(ii) Be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals;

(iii) Have a minimum step length of 16 inches (41 cm);

(iv) Have slip-resistant treads on all steps and landings; and

(v) Have stairrails and handrails which meet the requirements of § 1915.85(c).

(4) Ramps, runways, and gangways shall have guardrails which meet the requirements of § 1915.203.

(5) Integral prefabricated scaffold rungs shall:

(i) Be specifically designed and constructed for use as ladder rungs;

(ii) Have a minimum rung length of 11½ inches (29 cm);

(iii) Be uniformly spaced within each frame section;

(iv) Be provided with rest platforms at 20 foot (6.0 m) maximum vertical intervals; and

(v) Have a maximum spacing between rungs of 16½ inches (42 cm), however, non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16½ inches (42 cm).

(6) All steps and rungs shall line up vertically with each other between rest platforms.

(7) Direct access to or from another surface shall be used only when the scaffold is not more than 14 inches (36 cm) horizontally and not more than 24

inches (61 cm) vertically from the other surface.

(d) *Use.* (1) Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities.

(2) The use of shore or lean-to scaffolds is prohibited.

(3) Supported scaffolds and scaffold components shall be inspected for visible defects periodically and after any occurrence which could affect a scaffold's structural integrity.

Suspension scaffolds and scaffold components shall be inspected for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity.

(4) Any part of a scaffold damaged or weakened such that a capable person determines its strength is reduced to less than that required by § 1915.252(a)(1) shall be immediately braced to meet that provision, or be removed from service until repaired.

(5) Scaffolds shall not be moved while employees are on them, except that mobile scaffolds may be moved if the provisions of § 1915.253(s) are followed.

(6) Scaffolds shall not be erected, used, or moved closer to exposed and energized power lines than as follows:

(i) For all lines of more than 50 kv, minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, whichever is less, but never less than 10 feet (3.1 m);

(ii) For all insulated lines between 300 volts and 50 kv, the minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m);

(iii) For all insulated lines of less than 300 volts, the minimum clearance between the lines and all parts of the scaffold shall be two feet (0.6 m);

(iv) For all lines of any voltage which are uninsulated, the minimum clearance between the lines and all parts of the scaffold shall be: 10 feet (3.1 m) for lines of 50 kv and less; and for lines more than 50 kv, 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, whichever is less, but never less than 10 feet (3.1 m).

(7) Scaffolds shall not be erected, moved, dismantled, or altered except under the supervision of a capable person.

(8) Employees shall be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such material.

(9) Where swinging loads are being hoisted onto or near scaffolds such that loads could contact the scaffold, tag lines or equivalent measures to stabilize the loads shall be utilized.

(10) Suspension ropes shall be shielded when a heat-producing process is performed. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to protect against the corrosive substances, or shall be of a material which is not adversely affected by the substance being used.

(11) Work on or from scaffolds is prohibited during storms or when wind speeds at the level of work exceed 40 mph (64 km/hour), unless employees are protected by a body belt/harness system or wind screen. Wind screens shall not be used unless the scaffold is secured against the forces imposed.

(12) Debris shall not be allowed to accumulate on platforms.

(13) Ladders and makeshift devices shall not be used on top of scaffold platforms to increase the working level height of employees.

(14) Platform units shall not deflect more than 1/60 of the span when loaded.

(e) *Fall protection.* (1) Employees (except those erecting or dismantling scaffolds) shall be protected from falling to lower levels by the use of body belt/harness systems or Type I guardrail systems, in the following circumstances: when they are on scaffolds which are above water; when they are on scaffolds which are on vessels or vessel sections, and more than five feet (1.5 m) above lower levels; when they are on scaffolds which are located immediately adjacent to vessels, and more than five feet (1.5 m) above lower levels; and when they are on scaffolds which are located in any other area and more than 10 feet (3.1 m) above lower levels, except levels as follows:

(i) Employees on boatswains' chairs, catenary scaffolds, float scaffolds, needle beam scaffolds, and ladder jack scaffolds shall be protected by body belt/harness systems;

(ii) Employees on single-point adjustable suspension scaffolds and on two-point adjustable suspension scaffolds shall be protected by body belt/harness systems and Type I or Type II guardrail systems;

(iii) Employees on crawling boards (chicken ladders) shall be protected by body belt/harness systems, Type I guardrail systems, or by a three-fourth inch diameter grabline or equivalent handhold securely fastened beside each crawling board;

(iv) Employees on self-contained adjustable scaffolds shall be protected

by Type I guardrail systems when the platform is supported by the frame structure, and by body belt/harness systems and Type I guardrail systems when the platform is supported by ropes;

(v) Employees on walkways located within a scaffold shall be protected by a Type I guardrail system installed within eight inches of and along at least one side of the walkway.

(vi) Guardrail systems required by the above provisions may have rails omitted where the vessel, vessel section, building, or structure prevents their use. However, when rails are omitted, employees working above lower levels, shall be protected by body belt/harness systems, and employees working over water shall be protected by body belt/harness systems and personal flotation devices.

(2) Employees on suspended scaffolds which are attached to a vessel and triced out of a vertical line below the scaffold supports, and employees on scaffolds which are on floats subject to surging, shall be protected against falling toward the vessel by a Type I guardrail system attached on the vessel side of the platform, or they shall be protected by a body belt/harness system attached to a Type I guardrail system installed along the side of the platform which is away from the vessel.

(3) Body belt/harnesses shall be attached by lanyard to a dropline, trolley line, or scaffold structural member. However, when overhead obstructions such as overhead protection or additional platform levels are part of a single-point or two-point adjustable suspension scaffold, then droplines shall not be used.

(i) Droplines, when used, shall be fastened to a fixed safe point of anchorage, shall be independent of the scaffold, and shall be protected from sharp edges and abrasion.

(ii) Trolley lines, when used, shall be secured to two or more structural members of the scaffold, and shall not be attached to the suspension ropes.

(iii) When lanyards are connected to trolley lines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold shall be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or both of the suspension ropes fail. The independent support lines shall be equal in number and strength to the suspension ropes.

(iv) Droplines, independent support lines, and suspension ropes shall not be attached to each other, nor shall they be attached to or use the same point of

anchorage. Safe points of anchorage include structural members of vessels, vessel sections, buildings, and structures, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, nor counterweights.

(4) Guardrail systems installed to meet the requirements of this section shall comply with the following provisions:

(i) Guardrail systems shall be installed along all open sides and ends of platforms. See paragraph (e)(2) of this section for protection along the vessel side of scaffolds.

(ii) The top edge height of toprails or equivalent member shall be installed between 38 inches (1.0 m) and 45 inches (1.2 m) above the platform surface for Type I guardrail systems, and between 36 inches (0.9 m) and 45 inches (1.2 m) above the platform surface for Type II guardrail systems.

(iii) Midrails, screens, mesh, intermediate vertical members, solid panels, or equivalent structural members shall be installed between the top edge of the guardrail system and the scaffold platform.

(iv) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the platform surface.

(v) Screens and mesh, when used, shall extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports.

(vi) Intermediate vertical members (such as balusters), when used, shall be not more than 19 inches (48 cm) apart.

(vii) Toprails or equivalent members shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along their top edge of at least 200 pounds (890 n) for Type I guardrail systems, and at least 100 pounds (445 n) for Type II guardrail systems.

(viii) When the loads specified in paragraph (e)(4)(vii) of this section are applied in a downward direction, the top edge shall not deflect to a height less than 38 inches (1.0 m) above the platform surface for Type I guardrail systems, and 36 inches (0.9 m) for Type II guardrail systems.

(ix) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail, or other member, of at least 150 pounds (666 n) for Type I guardrail systems, and at least 75 pounds (333 n) for Type II guardrail systems.

(x) Suspension scaffold hoists and non-walk through stirrups are acceptable as end guardrails, provided that the space between the hoist or stirrup and the side guardrail or structure does not allow passage of employees to the end of the scaffold.

(xi) Toprails and midrails shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(xii) The ends of all rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard to employees.

(xiii) Steel or plastic banding shall not be used as a toprail or midrail.

(f) *Falling object protection.* (1) In addition to wearing hardhats, employees on scaffolds shall be protected as necessary from falling objects by toeboards, screens, or guardrail systems erected to prevent objects from falling from higher levels, or they shall be protected by a canopy structure erected to deflect falling objects. The criteria for falling object protection are set forth in § 1915.203(d).

(2) Canopies, when used, shall be installed between the falling object hazard and the employees.

(3) When canopies are used on suspension scaffolds, the scaffolds shall be equipped with additional independent support lines equal in number to the number of points supported, and equivalent in strength to the suspension ropes.

(4) Independent support lines and suspension ropes used on scaffolds with overhead protection shall not be attached to the same points of anchorage.

(5) When necessary, to prevent tools and materials from falling on employees below, toeboards shall be installed on all scaffolds which are on or immediately adjacent to vessels or vessel sections. The criteria for toeboards is set forth in § 1915.203(d).

(6) Except as provided in paragraph (f)(5) of this section, toeboards shall be installed on all open sides and edges of scaffold platforms which are more than 10 feet above lower levels except those which are wholly within the interior of a building and covering the entire floor area of any room therein and not having any side exposed to a hoistway, elevator shaft, stairwell, or other floor opening. The criteria for toeboards is set forth in § 1915.203(d).

§ 1915.253 Additional requirements applicable to specific types of scaffolds.

The following requirements apply to the specific types of scaffolds as indicated, in addition to the general requirements of § 1915.252.

(a) *Pole scaffolds.* (1) When platforms are being moved to the next level, the existing platform and ledgers shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platform units.

(2) Crossbracing shall be installed between the inner and outer sets of poles on double pole scaffolds.

(3) Diagonal bracing in both directions shall be installed across the entire inside face of double pole scaffolds.

(4) Diagonal bracing in both directions shall be installed across the entire outside face of all double- and single-pole scaffolds.

(5) Ledgers and bearers shall be installed on edge.

(6) Bearers shall extend a minimum of three inches (7.6 cm) over the outside edges of ledgers.

(7) Ledgers shall extend over a minimum of two poles, and shall be supported by bearing blocks securely attached to the poles.

(8) Braces, bearers, and ledgers shall not be spliced between poles.

(9) Where wood poles are spliced, the ends shall be squared and the upper section shall rest squarely on the lower section. Wood splice plates shall be provided on at least two adjacent sides and shall be not less than four feet (1.2 m) in length, overlap and abutted ends equally, and have at least the same cross-sectional areas as the pole. Splice plates of other materials of equivalent strength may be used.

(10) Scaffolds and scaffold components shall either be built and loaded in accordance with Appendix A, or shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(11) Wood pole scaffolds shall not be erected beyond the reach of firefighting equipment.

(b) *Tube and coupler scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platform units.

(2) Transverse bracing across the width of the scaffold shall be installed at the scaffold ends and at least at every third set of posts. Such bracing shall be installed for each section of six levels between the fourth and sixth levels, and shall extend diagonally from the inner or outer posts or runners at the bottom of the fourth level, upward to the inner or

outer posts or runners at the bottom of the fifth level, and similarly to the sixth level.

(3) Longitudinal bracing across the inner and outer rows of posts shall be installed diagonally in both directions, and shall extend from the base of the end posts upward to the top of the scaffold at approximately a 45-degree angle. On scaffolds whose length is greater than their height, such bracing shall be repeated beginning at least at every fifth post. On scaffolds whose length is shorter than their height, such bracing shall be installed from the base of the end posts upward to the opposite end posts, and then in alternating directions until reaching the top of the scaffold.

(4) Where conditions preclude the attachment of bracing to posts, bracing shall be attached to the runners.

(5) Bearers shall be installed transversely between each set of posts, at each level, and at each intermediate level where platforms are installed.

(6) Bearers, when coupled to posts, shall have the inboard coupler bear directly on the runner coupler. When the bearers are coupled to runners, the couplers shall be as close to the post as possible.

(7) Bearers shall extend beyond the posts and runners, and shall provide full contact with the coupler.

(8) Runners shall be installed along the length of the scaffold, located on both the inside and outside posts at level heights (when tube and coupler guardrails and midrails are used on outside posts they may be used in lieu of outside runners).

(9) Runners shall be interlocked on straight runs to form continuous lengths and shall be coupled to each post. The bottom runners shall be located as close to the base as possible.

(10) Couplers shall be of a structural metal, such as a drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited.

(11) Scaffolds and scaffold components shall either be built and loaded in accordance with Appendix A, or shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(c) *Fabricated frame scaffolds.* (1) When moving platforms to the next level, the existing platform shall be left undisturbed until the new frames have been set in place and braced prior to receiving the new platform units.

(2) Frames and panels shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to secure vertical members together laterally. The

cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, level, and square. All brace connections shall be made secure.

(3) Frames and panels shall be joined together vertically by coupling or stacking pins or equivalent means.

(4) Where uplift can occur which would displace scaffold end frames or panels, the frames or panels shall be locked together vertically by pins or equivalent means.

(5) Brackets used to support cantilevered loads shall be seated with side-brackets parallel to the frames, and end-brackets at 90 degrees to the frames. Brackets shall not be bent or twisted from these positions.

(6) Scaffolds over 125 feet (38.0 m) in height above their base plates shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(d) *Horse scaffolds.* (1) Scaffolds shall not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less.

(2) When arranged in tiers, each horse shall be placed directly over the horse in the tier below.

(3) When arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement.

(4) When arranged in tiers, each tier shall be crossbraced.

(e) *Bracket scaffolds.* (1) Each bracket shall be attached to the supporting vessel, vessel section, building, or structure by means of one or more of the following: nails; a metal stud attachment device; welding; hooking over a secured structural supporting member, or by a bolt extending through to the opposite side of the supporting wall.

(2) Folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

(f) *Outrigger scaffolds.* (1) The inboard end of outrigger beams, measured from the fulcrum point to the extreme point of anchorage, shall be not less than one and one-half times the outboard end in length.

(2) Outrigger beams shall rest on edge, the sides shall be plumb, and the edges shall be horizontal.

(3) The fulcrum point of outrigger beams shall rest on secure bearings at least six inches (15.2 cm) in each horizontal dimension.

(4) Outrigger beams shall be secured in place against movement and shall be securely braced at the fulcrum point against tipping.

(5) The inboard ends of outrigger beams shall be securely anchored either by means of braced struts bearing against sills in contact with the overhead or ceiling beams, or by means of tension members secured to the floor joists or deck underfoot, or by both.

(6) The entire supporting structure shall be securely braced to prevent any horizontal movement.

(7) To prevent displacement, platform units shall be nailed, bolted, or otherwise secured to outriggers.

(8) Scaffolds and scaffold components shall either be built and loaded in accordance with Appendix A, or shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(g) *Ladder jack scaffolds.* (1) Platforms shall not exceed a height of 20 feet (6.1 m).

(2) All ladders used to support ladder jack scaffolds shall meet the requirements of § 1915.86, except that job-made ladders shall not be used to support ladder jack scaffolds.

(3) The ladder jack shall be so designed and constructed that it will bear either on the side rails and ladder rungs or on the ladder rungs alone. If bearing on rungs only, the bearing area shall be at least 10 inches (25.4 cm) on each rung.

(4) Ladders used to support ladder jacks shall be placed, fastened, or equipped with devices to prevent slipping.

(5) Scaffold platforms shall not be bridged one to another.

(h) *Window jack scaffolds.* (1) Scaffolds shall be securely attached to the window opening.

(2) Scaffolds shall be used only for the purpose of working at the window opening through which the jack is placed.

(3) Window jacks shall not be used to support planks placed between one window jack and another, or for other elements of scaffolding.

(i) *Crawling boards (chicken ladders).* (1) Crawling boards shall extend from the roof peak to the eaves when used for maintenance.

(2) Crawling boards shall be secured to the roof by ridge hooks or equivalent means.

(j) *Step, platform, and trestle ladder scaffolds.* (1) Scaffold platforms shall not be placed any higher than the second highest rung or step of the ladder supporting the platform.

(2) All ladders used in conjunction with step, platform and trestle ladder scaffolds shall meet the requirements of § 1915.85, except that job-made ladders shall not be used to support such scaffolds.

(3) Ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping.

(4) Scaffolds shall not be bridged one to another.

(5) A spreader or locking device shall be used to hold the front and back sections in an open position, and to hold the extension section securely in the elevated position.

(k) *Single-point adjustable suspension scaffolds.* (1) When two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, the resulting scaffold shall meet the requirements for two-point adjustable suspension scaffolds.

(2) Except as provided herein, the supporting rope shall be vertical between the scaffold and the suspension device. The scaffold shall not be swayed nor the rope fixed to any intermediate point(s) to change the direction of the rope. When the scaffold is on the outside of a dome-type of slanted structure, intermediate supports may be used to change the direction of the rope from a vertical direction. Such supports shall be designed and installed to prevent chafing of the rope.

(3) Boatswains' chairs tackle shall be correct size ball bearing or bushed blocks, and properly "eye" spliced minimum five-eighth (5/8) inch (1.6 cm) diameter first grade manila rope, or equivalent.

(4) Boatswains' chairs seat slings shall be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition.

(5) Boatswains' chairs seat slings shall be a minimum of five-eighth (5/8) inch (1.6 cm) diameter fiber or synthetic rope or equivalent, except as provided in paragraph (k)(6) below.

(6) When a heat-producing process such as gas or arc welding is being conducted, boatswains' chairs seat slings shall be a minimum of three-eighth (3/8) inch (1.0 cm) wire rope.

(7) Non-cross-laminated wood boatswains' chairs shall be reinforced on their underside by cleats securely fastened to prevent the board from splitting.

(l) *Two-point adjustable suspension scaffolds (swing stages).* (1) Platforms shall not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions.

(2) The platform shall be securely fastened to hangers (stirrups) by U-bolts or equivalent means.

(3) The blocks for fiber or synthetic ropes shall consist of at least one double

and one single block. The sheaves of all blocks shall fit the size of the rope used.

(4) Platforms shall be ladder-type, plank-type, or beam-type.

(5) Scaffolds shall be tied or otherwise secured to prevent them from swaying. Window cleaners' anchors shall not be used for this purpose.

(6) Two-point scaffolds designed for use as two-point scaffolds shall not be bridged or otherwise connected one to another during raising and lowering operations. Two-point scaffolds designed for use in multi-point scaffolds may be bridged one to another if the bridge connections are articulated, and the hoists properly sized.

(7) Passage may be made from one platform to another only when the platforms are at the same height, are abutting closely, and walk-through stirrups specifically designed for this purpose are used.

(m) *Multi-point adjustable suspension scaffolds.* (1) When two or more scaffolds are used they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated, and the hoists are properly sized.

(2) If bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting closely.

(3) Scaffolds shall be suspended from metal outriggers, iron brackets, wire rope slings, iron hooks, or equivalent means.

(n) *Catenary scaffolds.* (1) No more than one platform shall be placed between consecutive vertical pickups, and no more than two platforms shall be used on a catenary scaffold.

(2) Platforms supported by wire ropes shall have hook-shaped stops on each end of the platforms to prevent them from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platform from falling if one of the horizontal wire ropes breaks.

(3) Wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them.

(4) Wire ropes shall be continuous and without splices between anchors.

(o) *Float (ship) scaffolds.* (1) The platform shall be supported by a minimum of two bearers, each of which shall project a minimum of six inches (15.2 cm) beyond the platform on both sides. Each bearer shall be securely fastened to the platform.

(2) Rope connections shall be such that the platform cannot shift or slip.

(3) When only two ropes are used with each float:

(i) They shall be arranged so as to provide four ends which are to be securely fastened to overhead supports.

(ii) Each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties.

(p) *Interior hung scaffolds.* (1) Scaffolds shall be suspended only from the roof structure, or other structural members such as a ship's overhead, or a building's ceiling beams.

(2) Overhead supporting members (overhead, roof structure, ceiling beams, or other structural members) shall be inspected and checked for strength before the scaffold is erected.

(3) Suspension ropes and cable shall be connected to the overhead supporting members by shackles, clips, thimbles, or equivalent means.

(q) *Needle beam scaffolds.* (1) Scaffold support beams shall be installed on edge.

(2) Ropes or hangers shall be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member.

(3) The ropes shall be securely attached to the needle beams.

(4) The support connection shall be arranged so as to prevent the needle beam from rolling or otherwise becoming displaced.

(5) Platform units shall be securely attached to the needle beams by bolts or equivalent means. Cleats and overhang are not considered to be adequate means of attachment.

(r) *Multi-level suspended scaffolds.* (1) Scaffolds shall be equipped with additional independent support lines, equal in number to the number of points supported, and equivalent in strength to the strength of the suspension ropes, and rigged to support the scaffold in the event the suspension rope(s) fail.

(2) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(3) Supports for platforms shall be attached directly to the support stirrup and not to any other platform.

(s) *Mobile scaffolds.* (1) Scaffolds shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to prevent collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. Scaffolds shall be plumb, level, and squared. All brace connections shall be secured.

(i) Scaffolds constructed of tube and coupler components shall also conform to the requirements of § 1915.253(b);

(ii) Scaffolds constructed of fabricated frame components shall also conform to the requirements of § 1915.253(c).

(2) Scaffold casters and wheels shall be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner.

(3) The force used to move the scaffold shall be applied as close to the base as practicable, but not more than five feet (1.5 m) above the supporting surface.

(4) Power systems used to propel mobile scaffolds shall be designed for such use. Forklifts, trucks, or similar motor vehicles shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

(5) Scaffolds shall be stabilized to prevent tipping during movement.

(6) Employees shall not be allowed to ride on scaffolds unless the following conditions exist:

(i) The surface on which the scaffold is being moved shall be within three degrees of level, and free of pits, holes, and obstructions;

(ii) The maximum height to base width ratio of the scaffold during movement shall be two to one or less. Outrigger frames may be included as part of the base width dimension;

(iii) Outrigger frames, when used, shall be installed on both sides of the scaffold;

(iv) When power systems are used, the propelling force shall be applied directly to the wheels, and shall not produce a speed in excess of one and one-fourth mph (2.0 kph), and

(v) The employees are not on any part of the scaffold which extends outward beyond the wheels, casters, or other supports.

(7) Platforms shall not extend outward past the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability.

(8) Where leveling of the scaffold is necessary, screw jacks or equivalent means shall be used.

(9) Caster stems and wheel stems shall be pinned or otherwise secured in scaffold legs.

(t) *Crane or derrick suspended personnel platforms.* (1) Lifting bridles on platforms suspended from cranes or derricks shall consist of four legs so attached that the stability of the platform is assured.

(2) Unless the crane or derrick hook has a safety latch or is moused, the lifting bridles on platforms suspended from cranes or derricks shall be attached by shackles to the lower lifting block or other positive means shall be

taken to prevent them from becoming accidentally disengaged from the hook.

Appendix A to Subpart N—Scaffold Specifications

This Appendix serves as a non-mandatory guideline to assist employers in complying with the requirements of Subpart N. An employer may use those guidelines and tables as a starting point for designing scaffold systems. However, the guidelines and tables do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of paragraph § 1915.252(a). Scaffold components which are not designed and loaded in accordance with this Appendix, and components for which no specific guidelines or tables are given in the following Appendix (e.g., joints, ties, components for wood pole scaffolds more than 60 feet in height, components for heavy-duty horse scaffolds, components made with other materials, components with other dimensions, etc.), must be designed and constructed in accordance with the capacity requirements of paragraph § 1915.252(a), and loaded in accordance with paragraph § 1915.252(d)(1).

Index to Appendix A for Subpart N

1. General Guidelines and Tables

2. Specific Guidelines and Tables

- (a) Pole scaffolds: Single pole woodfoils
- (i) Crawling boards (chicken ladders)
- (j) Step, platform, and trestle ladder scaffolds
- (k) Single-point adjustable suspension scaffolds
- (l) Two-point adjustable suspension scaffolds
- (m) Multi-point adjustable suspension scaffolds
- (n) Catenary scaffolds
- (o) Float (ship) scaffolds
- (p) Interior hung scaffolds
- (q) Needle beam scaffolds

1. *General guidelines and tables.* (a) The following tables, and the tables in Part B—Specific guidelines and tables, are based on all load-carrying timber members of the scaffold being a minimum of 1,500 psi fiber stress in bending (stress grade) construction grade lumber. All dimensions are nominal sizes as provided in the American Softwood Lumber Standards, dated January 1970, except that where rough sizes are noted, only rough or undressed lumber of the size specified will satisfy minimum requirements.

(b) All wood planking shall be selected for scaffold plank use as recognized by grading rules established by a recognized independent inspection agency for the species of wood used. The maximum permissible spans for 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn wood planks shall be as shown in the following Table A-1:

TABLE A-1

Maximum intended load (lb/ft ²)	Maximum permissible span using full thickness undressed lumber (ft)	Maximum permissible span using nominal thickness lumber (ft)
25	10	8
50	8	6
75	6	

The maximum permissible span for 1 1/4 x 9-inch or wider wood plank of full thickness with a maximum intended load of 50 lb/ft² shall be four feet.

(c) Fabricated planks and platforms may be used in lieu of solid sawn wood planks. Maximum spans for such units shall be as recommended by the manufacturer based on the maximum intended load being calculated as follows:

Rated load capacity	Intended load
Light-duty	● 25 pounds per square foot applied uniformly over the entire span area.
Medium-duty	● 50 pounds per square foot applied uniformly over the entire span area.

Rated load capacity	Intended load
Heavy-duty	● 75 pounds per square foot applied uniformly over the entire span area.
One-person	● 250 pounds placed at the center of the span (total 250 pounds).
Two-person	● 250 pounds placed 18 inches to the left and right of the center of the span (total 500 pounds).
Three-person	● 250 pounds placed at the center of the span and 250 pounds placed 18 inches to the left and right of the center of the span (total 750 pounds).

Note.—Platform units used to make scaffold platforms intended for light-duty use shall be capable of supporting at least 25 pounds per square foot applied uniformly over the entire unit-span area, or a 250-pound point load placed on the unit at the center of the span, whichever load produces the greater shear force.

(d) Guardrails shall be as follows:

(i) Toprails shall be equivalent in strength to 2 inch by 4 inch lumber;

1 1/4 inch x 1/2 inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(ii) Midrails shall be equivalent in strength to 1 inch by 6 inch lumber;

1 1/4 inch x 1 1/4 inch x 1/2 inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(iii) Toeboards shall be equivalent in strength to 1 inch by 4 inch lumber;

1 1/4 inch x 1 1/4 inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(iv) Posts shall be equivalent in strength to 2 inch by 4 inch lumber;

1 1/4 inch x 1 1/4 inch x 1/2 inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(v) Distance between posts shall not exceed 8 feet.

(e) Overhead protection shall consist of 2 inch nominal planking laid tight, or 3/4-inch plywood.

(f) Screen installed between toeboards and midrails or top rails shall consist of No. 18 gauge U.S. Standard wire one inch mesh.

2. *Specific guidelines and tables*—(a) *Pole scaffolds.*

TABLE A-2.—MINIMUM DIMENSIONS FOR SINGLE POLE WOOD POLE SCAFFOLDS

	Light duty up to 20 ft high	Light duty up to 60 ft high	Medium duty up to 60 ft high	Heavy duty up to 60 ft high
Maximum intended load	25 lbs/ft ²	25 lbs/ft ²	50 lbs/ft ²	75 lbs/ft ²
Poles or uprights	2 x 4 in	4 x 4 in	4 x 4 in	4 x 6 in
Maximum pole spacing (longitudinal)	6 ft	10 ft	8 ft	6 ft
Maximum pole spacing (transverse)	5 ft	5 ft	5 ft	5 ft
Ledgers (transverse)	1 x 4 in	1 1/4 x 9 in	2 x 10 in	2 x 10 in
Bearers and maximum spacing of bearers:				
3 ft	2 x 4 in	2 x 4 in	2 x 10 in or 3 x 4 in	2 x 10 in or 3 x 5 in
5 ft	2 x 6 in or 3 x 4 in	2 x 6 in or 3 x 4 in (rough)	2 x 10 in or 3 x 4 in	2 x 10 in or 3 x 5 in
6 ft			2 x 10 in or 3 x 4 in	2 x 10 in or 3 x 5 in
8 ft			2 x 10 in or 3 x 4 in	
Planking	1 1/4 x 9 in	2 x 10 in	2 x 10 in	2 x 10 in
Maximum vertical spacing of horizontal members	7 ft	9 ft	7 ft	6 ft 6 in
Bracing—horizontal	1 x 4 in	1 x 4 in	1 x 6 in or 1 1/4 x 4 in	2 x 4 in
Bracing—diagonal	1 x 4 in	1 x 4 in	1 x 4 in	2 x 4 in
Tie-ins	1 x 4 in	1 x 4 in	1 x 4 in	1 x 4 in

Note.—All members except planking are used on edge. All wood bearers shall be

reinforced with 3/16 x 2 in steel strip, or the equivalent, secured to the lower edges for the

entire length of the bearer.

TABLE A-3.—MINIMUM DIMENSIONS FOR INDEPENDENT WOOD POLE SCAFFOLDS

	Light duty up to 20 ft high	Light duty up to 60 ft high	Medium duty up to 60 ft high	Heavy duty up to 60 ft high
Maximum intended load	25 lbs/ft ²	25 lbs/ft ²	50 lbs/ft ²	75 lbs/ft ²
Poles or uprights	2 x 4 in	4 x 4 in	4 x 4 in	4 x 4 in
Maximum pole spacing (longitudinal)	6 ft	10 ft	8 ft	6 ft
Maximum pole spacing (transverse)	6 ft	10 ft	8 ft	8 ft
Ledgers	1 1/4 x 4 in	1 1/4 x 9 in	2 x 10 in	2 x 10 in
Bearers and maximum spacing of bearers:				
3 ft	2 x 4 in	2 x 4 in	2 x 10 in	2 x 10 in (rough).

TABLE A-3.—MINIMUM DIMENSIONS FOR INDEPENDENT WOOD POLE SCAFFOLDS—Continued

	Light duty up to 20 ft high	Light duty up to 60 ft high	Medium duty up to 60 ft high	Heavy duty up to 60 ft high
6 ft.....	2 x 6 in or 3 x 4 in.....	2 x 10 in (rough) or 3 x 8 in.....	2 x 10 in.....	2 x 10 in (rough).....
8 ft.....	2 x 6 in or 3 x 4 in.....	2 x 10 in (rough) or 3 x 8 in.....	2 x 10 in.....	—
10 ft.....	2 x 6 in or 3 x 4 in.....	2 x 10 in (rough) 3 x 3 in.....	—	—
Planking.....	1 1/4 x 9 in.....	2 x 10 in.....	2 x 10 in.....	2 x 10 in.....
Maximum vertical spacing of horizontal members.....	7 ft.....	7 ft.....	6 ft.....	6 ft.....
Bracing—horizontal.....	1 x 4 in.....	1 x 4 in.....	1 x 6 in or 1 1/4 x 4 in.....	2 x 4 in.....
Bracing—diagonal.....	1 x 4 in.....	1 x 4 in.....	1 x 4 in.....	2 x 4 in.....
Die-ins.....	1 x 4 in.....	1 x 4 in.....	1 x 4 in.....	1 x 4 in.....

Note.—All members except planking are used on edge. All wood bearers shall be reinforced with 1/2 x 2 in steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

(b) Tube and coupler scaffolds.

TABLE A-4.—MINIMUM DIMENSIONS FOR TUBE AND COUPLER SCAFFOLDS

	Light duty	Medium duty	Heavy duty
Maximum intended load.....	25 lbs/ft.....	50 lbs/ft ²	75 lbs/ft ²
Posts, runners and braces.....	Nominal 2 in (1.90 in) OD steel tube or pipe.....	Nominal 2 in (1.90 in) OD steel tube or pipe.....	Nominal 2 in (1.90 in) OD steel tube or pipe.....
Bearers.....	Nominal 2 in (1.90 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 10 ft ¹	Nominal 2 in (1.90 in) OD steel tube or pipe and a maximum post spacing of 5 ft by 8 ft ¹ or Nominal 2 1/2 in (2.375 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 8 ft ¹	Nominal 2 1/2 in (2.375 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 6 ft.....
Maximum runner spacing vertically.....	6 ft 6 in.....	6 ft 6 in.....	6 ft 6 in.....

¹ Bearers shall be installed in the direction of the shorter dimension.

Note.—Longitudinal diagonal bracing shall be installed at an angle of 45° (± 5°).

TABLE A-5.—MAXIMUM NUMBER OF PLANKED LEVELS FOR TUBE AND COUPLER SCAFFOLDS

	Maximum number of additional planked levels			Maximum height of scaffold
	Light duty	Medium duty	Heavy duty	
Number of Working Levels:				
1.....	16	11	6	125 ft
2.....	11	1	0	
3.....	6	0	0	
4.....	1	0	0	

(c) Fabricated frame scaffolds.

Because of their prefabricated nature, no specific guidelines or tables are given.

(d) Horse scaffolds.

TABLE A-6.—MINIMUM DIMENSION FOR HORSE SCAFFOLDS

Maximum intended load (light duty).....	25 lb/ft ²
Maximum intended load (medium duty).....	50 lb/ft ²
Horizontal members or bearers:	
Light duty.....	2 x 4 in.
Medium duty.....	3 x 4 in.
Legs.....	2 x 4 in.
Longitudinal brace between legs.....	1 x 6 in.

TABLE A-6.—MINIMUM DIMENSION FOR HORSE SCAFFOLDS—Continued

Gusset brace at top of legs.....	1 x 8 in.
Half diagonal braces.....	2 x 4 in.

¹ Horses shall be spaced not more than eight feet apart for light duty loads, and not more than five feet apart for medium duty loads.

(e) Bracket scaffolds. (1) Brackets shall consist of a triangular-shaped frame made of wood with a cross-section not less than 2 inches by 3 inches, or of 1 1/4 inch x 1 1/4 inch x 1/2 inch structural angle iron.

(2) Bolts used to attach brackets shall not be less than five-eighth inch in diameter.

(3) Maximum bracket spacing shall be eight feet on centers.

(4) No more than two employers shall occupy any given eight feet of a bracket scaffold at any one time. Tools and materials shall not exceed 75 pounds in addition to the occupancy.

TABLE A-7.—MINIMUM DIMENSIONS FOR WOODEN FIGURE-FOUR SCAFFOLDS

Maximum intended load.....	25 pounds/square foot.
Uprights.....	2 x 4 in. or 2 x 6 in.

TABLE A-7.—MINIMUM DIMENSIONS FOR WOODEN FIGURE-FOUR SCAFFOLDS—Continued

Bearers (two).....	1 x 6 in.
Braces.....	1 x 6 in.
Maximum length of bearers.....	3 x 6 in. (unsupported)

Outrigger bearers for wooden figure-four scaffolds shall consist of two pieces of 1 x 6 inch lumber nailed on opposite sides of the vertical support.

Bearers for wooden figure-four scaffolds shall project not more than three feet six inches from the outside of the support, and shall be braced and secured to prevent tipping or turning. The knee or angle brace shall intersect the bearer at least three feet from the form at an angle of approximately 45 degrees, and the lower end shall be nailed to a vertical support.

TABLE A-8.—MINIMUM DIMENSIONS FOR METAL BRACKET SCAFFOLDS

Maximum intended load.....	25 pounds/square foot.
Uprights.....	2 x 4 in.
Bearers.....	As designed.

TABLE A-8.—MINIMUM DIMENSIONS FOR METAL BRACKET SCAFFOLDS—Continued

Braces..... As designed.

TABLE A-9.—MINIMUM DIMENSIONS FOR WOOD BRACKET SCAFFOLDS

Maximum intended load 25 pounds/square foot.
Uprights 2 x 4 in or 2 x 6 in.
Bearers 2 x 6 in.
Maximum scaffold width.... 1 x 6 in.
Braces..... 1 x 6 in.

(f) *Outrigger scaffolds (single level).* Outrigger beams shall extend not more than six feet beyond the face of the building.

TABLE A-10.—MINIMUM DIMENSIONS FOR OUTRIGGER SCAFFOLDS

	Light duty	Medium duty
Maximum intended load.	25 lb/ft ²	50 lb/ft ²
Outrigger size.....	2 x 10 in.....	3 x 10 in.
Maximum outrigger spacing.	10 ft.....	6 ft.

(g) *Ladder jack scaffolds.* Maximum intended load—25 lb/ft². However, not more than two employees shall occupy any platform at any one time. Maximum span between supports shall be eight feet.

(h) *Window jack scaffolds.* Not more than one employee shall occupy a window jack scaffold at any one time.

(i) *Crawling boards (chicken ladders).* Crawling boards shall be not less than 10 inches wide and one inch thick, with cleats having a minimum 1 x 1½ inch cross-sectional area. The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed 24 inches.

(j) *Step, platform, and trestle ladder scaffolds.* (1) The minimum dimensions of the side rails of the trestle ladder, or the base sections of the extension trestle ladder, shall be as follows:

(i) Ladders up to and including those 16 feet long shall have side rails of not less than 1½ x 2½ inch lumber.

(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1½ x 3 inch lumber.

(2) The side rails of the extension section of the extension trestle ladder shall be parallel and shall have minimum dimensions as follows:

(i) Ladders up to and including 12 feet long shall have side rails of not less than 1½ x 2½ inch lumber.

(ii) Ladders over 12 feet long and up to and including those 16 feet long shall have side rails of not less than 1½ x 2½ inch lumber.

(iii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1½ x 2½ inch lumber.

(3) Trestle ladders and base sections of extension trestle ladders shall be so spread that when in an open position the spread of the trestle at the bottom, inside to inside, shall be not less than five and one-half inches per foot of the length of the ladder.

(k) *Single-point adjustable suspension scaffolds.* Maximum intended load—250 lbs.

Wood seats for boatswains' chairs shall be not less than one inch thick if made of non-

laminated wood, or five-eighth inch thick if made of marine quality plywood.

(l) *Two-point adjustable suspension scaffolds.* (1) In addition to direct connections to vessels, vessel sections, buildings (except window cleaners' anchors), and structures, acceptable ways to prevent scaffold sway include angulated roping and static lines. Angulated roping is a system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the vertical plane of the vessel or building than the corresponding attachment points on the platform, thus causing the platform to press against the side of the vessel or face of the building. Static lines are separate ropes secured at their top and bottom ends closer to the vertical plane of the vessel or building than the outermost edge of the platform. By drawing the static line taut, the platform is drawn against the side of the vessel or face of the building.

(2) On suspension scaffolds designed for a working load of 500 pounds, no more than two employees shall be permitted on the scaffold at one time. On suspension scaffolds with a working load of 750 pounds, no more than three employees shall be permitted on the scaffold at one time.

(3) Ladder-type platforms. The side stringer shall be of clear straight-grained spruce. The rungs shall be of straight-grained oak, ash, or hickory, at least one and one-eighth inches in diameter, with seven-eighth inch tenons mortised into the side stringers at least seven-eighth inch. The stringers shall be tied together with tie rods not less than one-fourth inch in diameter, passing through the stringers and riveted up tight against washers on both ends. The flooring strips shall be spaced not more than five-eighth inch apart, except at the side rails where the space may be one inch. Ladder-type platforms shall be constructed in accordance with the following table:

TABLE A-11.—MINIMUM DIMENSIONS FOR LADDER-TYPE PLATFORMS

Length of platform.....	12 ft.....	14 & 16 ft.....	18 & 20 ft.....
Side stringers, minimum cross section finished sizes:			
At ends.....	1½ x 2½ in.....	1½ x 2½ in.....	1½ x 3 in.
At middle.....	1½ x 3½ in.....	1½ x 3½ in.....	1½ x 4 in.
Reinforcing strip (minimum).....	A ½ x ¾ inch steel reinforcing strip shall be attached to the side or underside, full length.		
Rungs.....	Rungs shall be 1½ inch minimum diameter with at least ¾ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.		
Tie rods:			
Number (minimum).....	3.....	4.....	4.
Diameter (minimum).....	¼ in.....	¼ in.....	¼ in.
Flooring, minimum finished size.....	½ in x 2½ in.....	½ x 2½ in.....	½ x 2½.

TABLE A-12.—MINIMUM DIMENSIONS FOR LADDER-TYPE PLATFORMS

Length of platform.....	22 and 24 ft.....	28 and 30 ft.....
Side stringers, minimum cross section (finished sizes):		
At ends.....	1½ in x 3 in.....	1½ x 3½.
At middle.....	1½ x 4½ in.....	1½ x 5 in.
Reinforcing strip (minimum).....	A ½ x ¾-inch steel reinforcing strip shall be attached to the side or underside, full length.	
Rungs.....	Rungs shall be 1½-inch minimum diameter with at least ¾ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.	
Tie rods:		
Number (minimum).....	5.....	6.
Diameter (minimum).....	¼ in.....	¼ in.
Flooring, minimum finished size.....	½ x 2½ in.....	½ x 2½ in.

(4) **Plank-Type Platforms.** Plank-type platforms shall be composed of not less than nominal 2 x 8 inch unspliced planks, connected together on the underside with cleats at intervals not exceeding four feet, starting six inches from each end. A bar or other effective means shall be securely fastened to the platform at each end to prevent the platform from slipping off the hanger. The span between hangers for plank-type platforms shall not exceed 10 feet.

(5) **Beam-Type Platforms.** Beam platforms shall have side stringers of lumber not less than 2 x 6 inches set on edge. The span between hangers shall not exceed 12 feet when beam platforms are used. The flooring shall be supported on 2 x 6 inch cross beams, laid flat and set into the upper edge of the stringers with a snug fit, at intervals of not more

than four feet, securely nailed in place. The flooring shall be of 1 x 6 inch material nailed to the cross beams. Floor-boards shall not be spaced more than one-half inch apart.

(m) **Multi-point adjustable suspension scaffolds.** No specific guidelines or tables are given for these scaffolds.

(n) **Catenary scaffolds.** (1) Maximum intended load—500 lbs.

(2) Not more than two employees shall be permitted on the scaffold at one time.

(3) Maximum capacity of comealong shall be 2,000 lbs.

(4) Vertical pickups shall be spaced not more than 50 feet apart.

(o) **Float (ship) scaffolds.** (1) Maximum intended load—750 lbs.

(2) Platforms shall be made of three-fourth inch plywood, equivalent in rating

to American Plywood Association Grade B-B, Group 1, Exterior.

(3) Bearers shall be made from 2 x 4 inch, or 1 x 10 inch rough lumber. They shall be free of knots and other flaws.

(p) **Interior hung scaffolds.**

TABLE A-13—MINIMUM DIMENSIONS FOR INTERIOR HUNG SCAFFOLDS

Bearers (use on edge).....	2 x 10 in.
Maximum intended load	Maximum span.
25 lb/ft ²	10 ft.
50 lb/ft ²	10 ft.
75 lb/ft ²	7 ft.

[FR Doc. 88-27003 Filed 11-28-88; 8:45 am]
BILLING CODE 4510-26-M

Test Report Federal Register

Tuesday
November 29, 1988

Part III

Environmental Protection Agency

40 CFR Part 300

**Amendment to the National Oil and
Hazardous Substances Pollution
Contingency Plan; Procedures for
Planning and Implementing Off-Site
Response Actions; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3355-5]

Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 CFR Part 300, by adding a new § 300.440. The proposed rule implements the requirements of section 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 *et seq.*, and includes certain additional requirements that EPA finds to be appropriate under that section. CERCLA section 121(d)(3) describes procedures that must be observed when a response action under CERCLA involves off-site management of CERCLA wastes resulting from CERCLA decision documents signed after the enactment of SARA (i.e., after October 17, 1986). This proposed rule also reinterprets and codifies the original May 1985 off-site policy (published in the Federal Register on November 5, 1985 at 50 FR 45933-45937), as it applies to off-site management of CERCLA wastes resulting from CERCLA decision documents signed before the enactment of SARA.

DATES: Comments must be submitted on or before January 13, 1989.

ADDRESS: Comments may be mailed to Susan Bromm, Acting Director, RCRA Enforcement Division, Office of Waste Programs Enforcement (WH-527), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Nancy Browne, RCRA Enforcement Division, Office of Waste Programs Enforcement (WH-527), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Phone (202) 475-9326, or the RCRA Hotline (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority.

II. Introduction.

III. Background.

IV. Scope and Applicability.

A. Wastes Affected

1. Waste Samples

B. Actions Affected

C. Pre-SARA v. Post-SARA Actions

D. RCRA Section 7003 Actions

E. State's Role

1. Demonstration of State Capability

2. Cooperative Agreement Requirement

V. Determining Acceptability

A. Acceptability Criteria

1. Compliance Criteria

a. Receiving Unit

b. Facility

c. Relevant Violations

d. Minimum Technology Requirements

2. Release Criteria

a. Definition of Release

b. Release Criteria for Facilities

Receiving Post-SARA Waste

c. Release Criteria for Facilities

Receiving Pre-SARA Waste

B. Basis for Determining Acceptability

1. Compliance Determination

2. Release Determination

VI. Notification of Acceptability

A. Background

B. Notice and Review Procedures

C. Administrative and Judicial Appeals

VII. Re-evaluating Unacceptability

A. Compliance Criteria

B. Release Criteria for Facilities Receiving Post-SARA Wastes

1. RCRA Subtitle C Facilities—

Releases at Receiving Units

2. RCRA Subtitle C Facilities—

Releases at Non-Receiving Units

3. Corrective Action Orders/

Agreements

4. Non-Subtitle C Facilities—Releases

5. Opportunity to Notify Agency of

Return to Acceptability

C. Release Criteria for Facilities Receiving Pre-SARA Wastes

D. Opportunities for Review of Unacceptability Determinations in Place on November 13, 1987

VIII. Manifest Requirements

IX. Regulatory Analysis

A. Regulatory Impact Analysis

B. Regulatory Flexibility Act

I. Authority

Sections 104(c)(3), 104(d)(1), 105, and 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9604(c)(3), 9605, 9621(d)(3)); section 311(c)(2) of the Clean Water Act (33 U.S.C. 1321(c)(2)); Executive Order 12580 (52 FR 2923, January 29, 1987); and Executive Order 11735 (38 FR 21243, August 1973).

II. Introduction

Today's proposed rule would amend the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, by adding a new § 300.440.

The purpose of this off-site regulation is to avoid having wastes from CERCLA-authorized or -funded response actions contribute to present or future environmental problems by directing these wastes to management units determined to be environmentally sound. Congress and EPA have always believed that a CERCLA cleanup should be more than a relocation of environmental problems, and have attempted to ensure the proper treatment and disposal of hazardous substances removed from a CERCLA site.

Today's proposed rule implements the requirements of section 121(d)(3) of CERCLA, which provides that in the case of any CERCLA response action involving the transfer of any hazardous substance, pollutant, or contaminant off-site, that waste may only be placed in a facility that is in compliance with RCRA (or other Federal law) and applicable State requirements. CERCLA requires that for "land disposal facilities," there may be no transfer of wastes to a unit with releases, and any releases at other units must be controlled. These statutory requirements apply only to CERCLA cleanup actions originating after the date of enactment of SARA.

These requirements are integral components of the "selection of remedial action" provision in CERCLA section 121, and their proper application is necessary to ensure that response actions selected are protective of human health and the environment (consistent with CERCLA section 121(b)(1), and more generally, with section 104(a)(1)).

Although CERCLA section 121(d)(3) applies compliance criteria to all facilities, it applies "release" criteria only to land disposal facilities. EPA believes, as a matter of policy, that some release criteria should also be applied to all facilities that receive wastes from CERCLA-authorized or -funded response actions, including RCRA treatment, storage, and permit-by-rule facilities, and any non-RCRA Subtitle C facilities (such as facilities permitted to receive wastes under the Toxic Substances Control Act (TSCA)). The Agency believes that such a step will further the protection of human health and the environment, and the development of a sound and consistent public policy; it would also serve to further the goals reflected in CERCLA section 121(d)(3).

Similarly, although section 121(d)(3) applies to wastes from post-SARA cleanup actions only, EPA believes that it is logical and appropriate to apply compliance and release criteria to wastes resulting from two additional categories of similar cleanup actions:

those authorized under CERCLA before the enactment of SARA, and those performed under the National Contingency Plan pursuant to section 311 of the Clean Water Act (for non-petroleum products). Accordingly, this proposed rule applies to a number of situations in addition to those expressly set out in section 121(d)(3) of CERCLA.

The revised off-site policy of November 13, 1987 (OSWER Directive #9834.11), will remain in effect during the pendency of this proposal, but it will be superseded by the off-site rule when finally issued.

Today's proposed rule establishes the criteria and procedures for determining whether facilities are acceptable for the off-site receipt of waste from CERCLA-authorized or -funded response actions and outlines the wastes and actions affected by the criteria. It establishes compliance criteria and release criteria and discusses the differences in applicability of these criteria to facilities receiving wastes from pre-SARA or post-SARA actions. The proposed rule also establishes a process for determining whether facilities are acceptable based on the compliance and release criteria.

The proposed rule establishes procedures for notification of unacceptability, appeals of unacceptability determinations, and re-evaluation of unacceptability determinations. Under the rule, the policy of applying off-site requirements to actions taken under section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) (RCRA) would be stopped.

The off-site regulation should help prevent the aggravation of conditions at problem sites and reduce the Government's and the Superfund's potential liability by establishing criteria governing the off-site transfer of waste from CERCLA-authorized or -funded response actions. The rule should also help to ensure that off-site transfer decisions are made in an environmentally sensible manner, consistent with sound public policy and business practices.

III. Background

From the beginning of the CERCLA program, Congress has mandated that Superfund wastes be treated, stored, and disposed of in an environmentally sound manner. Section 104(c)(3) of the original Superfund legislation (CERCLA, December 1980) required States to ensure the availability of a hazardous waste disposal facility in compliance with RCRA Subtitle C for receipt of

waste from Fund-financed remedial actions.

In January 1983, EPA issued "Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action". This first guidance on the off-site transfer of CERCLA wastes required that a facility be inspected and that all major violations at the facility be corrected in order for the facility to be acceptable for the receipt of CERCLA wastes from remedial or removal actions.

EPA's May 1985 "Procedures for Planning and Implementing Off-Site Response Actions" (50 FR 45933) ("off-site policy") detailed the criteria for evaluating the acceptability of facilities to receive Superfund wastes. These criteria required that the facility have a RCRA permit or RCRA interim status, as well as receive a compliance inspection not more than six months prior to receiving CERCLA waste. The policy also required significant violations or other environmental conditions to be addressed through appropriate enforcement actions. The off-site policy further required that land disposal units accepting CERCLA waste be in compliance with the minimum technology requirements of RCRA section 3004(o). The policy finally required that all RCRA manifest requirements and PCB disposal requirements must be followed when applicable. In addition to detailing these evaluation criteria, the off-site policy also extended coverage under the policy to include enforcement actions under CERCLA section 106 and RCRA section 7003 as well as Superfund removal actions.

The National Contingency Plan (NCP), revised in November 1985 (40 CFR Part 300), incorporated requirements for off-site receipt of CERCLA waste. The NCP, at 40 CFR 300.68(a)(3), required that facilities have permits, or other appropriate authorization to operate, in order to be acceptable for receiving off-site CERCLA waste.

The 1986 Superfund Amendments and Reauthorization Act (SARA) reaffirmed the rationale embodied in CERCLA section 104(c)(3) and the May 1985 off-site policy. Section 121(d)(3) of CERCLA, as added by SARA, explicitly provides that in the case of any CERCLA "removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site," such transfer shall only be to a facility operating in compliance with the Solid Waste Disposal Act (as amended by RCRA and the Hazardous and Solid Waste Amendments (HSWA)), the Toxic Substances Control Act (TSCA), or other Federal law, and all applicable

State requirements. The section also requires that receiving units at land disposal facilities have no releases of hazardous wastes or hazardous constituents and that any releases from other units at a land disposal facility be controlled by a RCRA corrective action program.

Finally, EPA issued revised procedures for implementing off-site response actions on November 13, 1987, as a memorandum from J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, to the EPA Regional Administrators (OSWER Directive No. 9834.11) (the "revised off-site policy"). These procedures, which were effective immediately, implemented the SARA requirements, updated the 1985 off-site policy, and provided detailed procedures for issuing and reviewing unacceptability determinations.

The requirements set out in CERCLA section 121(d)(3) (and incorporated in the November 1987 revised off-site policy) prescribe a higher standard of care for the management of hazardous substances from CERCLA-funded or -authorized cleanups than for the management of waste from other sources. First, section 121(d)(3) directs EPA to send wastes from CERCLA cleanups only to those facilities operating "in compliance" with RCRA and other applicable laws, whereas private generators may send wastes to facilities that have some regulatory violations (unless the violations are so serious that the facility is stopped from operating). Second, by prohibiting disposal in units at a land disposal facility with releases (a release itself is generally not a violation of RCRA), SARA went beyond requirements applicable to commercial generators and beyond the May 1985 policy, which required compliance with RCRA and other applicable laws but allowed the Agency to continue to send CERCLA wastes to a facility with releases if the Agency judged that the releases did not constitute environmental conditions that affected the satisfactory operation of the facility.

Congressional intent to establish more stringent requirements for CERCLA wastes is seen in a 1985 report of the House Committee on Energy and Commerce on a predecessor bill to SARA:

The transfer of wastes removed from Superfund sites to operating landfills which are also leaking toxics into the environment is a problem that continues to plague the Superfund program * * * In an effort to address this serious problem, the bill would prohibit the transfer of Superfund wastes to

RCRA facilities which are not operating in compliance with the requirements of sections 3004 and 3005 of that Act.

Unfortunately, this relatively simple legal prohibition does not resolve the problem of transferring Superfund wastes to leaking landfills because the RCRA program involves a two-stage process for the regulation and permitting of operating hazardous waste disposal facilities. First, the owners and operators of such facilities were granted "interim status" under the law without demonstrating that they have effectively prevented any leakage, or contamination, of the environment. Only in the second stage of the program—which EPA does not intend to fully implement until the end of the decade—will the owners and operators of such facilities be given final permits that require them to guarantee that their facilities are not leaking toxic substances into groundwater, surface water, soil or air.

Because it is not a violation of RCRA Interim status requirements to operate with significant leakage problems, many facilities are experiencing such problems. The bill prohibits the transfer of Superfund wastes to facilities which are already releasing hazardous wastes into groundwater. [H. Rept. 253, 99th Cong., 1st sess. at 279 (1985).]

Today's proposed rule implements and codifies the requirements contained in CERCLA section 121(d)(3), as well as those in the revised off-site policy memorandum.

IV. Scope and Applicability

A. Wastes Affected

This proposed rule applies to the off-site treatment, storage or disposal of all waste from CERCLA-authorized or -funded response actions. Cercla wastes include RCRA hazardous wastes and all other CERCLA hazardous substances, pollutants and contaminants. RCRA hazardous wastes are either listed or defined by their characteristics at 40 CFR Part 261; CERCLA hazardous substances are defined in section 101(14) of CERCLA and at 40 CFR 300.6; and CERCLA pollutants and contaminants are defined in section 101(33) of CERCLA and at 40 CFR 300.6.

1. Waste Samples

The transfer of samples to an off-site laboratory for characterization is not subject to this rule. However, the subsequent transfer of the waste samples is subject to the requirements of this rule. EPA believes that this limited exemption is appropriate because: in general, the samples used for characterization are small; laboratories are intended for analysis, not for treatment, storage or disposal; rapid sample characterization is critical to prompt site evaluation and response; and the ultimate treatment, storage or disposal of the waste samples will occur

at facilities determined to be acceptable under this rule.

B. Actions Affected

EPA interprets CERCLA section 121(d)(3) as expressing Congress' intent that wastes cleaned up pursuant to the response authorities of CERCLA (or with financing from CERCLA's "Superfund") should be sent only to the most environmentally sound facilities in order to guarantee that the response actions chosen are fully protective of human health and the environment and do not create new environmental problems. EPA believes these goals are also important for CERCLA response actions outside the scope of section 121(d)(3); thus the proposed rule would apply to all removal or remedial actions involving the off-site transfer of any hazardous substance, pollutant or contaminant that were financed in whole or in part by CERCLA's Superfund or were taken pursuant to CERCLA response authorities (whether initiated before or after the enactment of SARA), including those actions taken jointly under CERCLA and another authority. The rule does apply to cleanups at Federal facilities under section 120 of CERCLA. In addition, as a matter of policy, the proposed rule would apply to those removal or remedial actions involving the off-site transfer of CERCLA hazardous substances pursuant to section 311 of the Clean Water Act (33 U.S.C. 1321). The extension of this rule to CWA actions is consistent with the NCP (see 40 CFR 300.4) and with EPA's responsibility to ensure that its response actions (including the choice of an off-site treatment, storage or disposal facility) are protective of health and the environment (CERCLA section 104(a)(1)). CWA response actions are like any other removal or remedial action covered by this rule, and wastes from such actions (except oil) will be subject to the requirements of this rule in the same manner as any CERCLA waste, including the differing requirements for wastes from pre- and post-SARA decision documents.

The proposed rule would not apply to State-lead enforcement actions (even at National Priorities List (NPL) sites) if no CERCLA funds or authorities are involved. The proposed rule does apply to State-lead enforcement actions where EPA provides any site-specific funding through a Cooperative Agreement or Multi-Site Cooperative Agreement, even though the State may be using its own enforcement authorities to compel the cleanup. Similarly, non-NPL sites are covered by this proposed rule where there is an expenditure of CERCLA

money or where the cleanup is undertaken under CERCLA authority.

In cases of removal actions under CERCLA, enforcement actions taken as removal actions, or response actions under section 311 of the Clean Water Act, where allowing the source of a release or threat of a release to remain in an area of public access will result in an immediate and significant threat, the On-Scene Coordinator (OSC) may determine that it is imperative to remove the substances immediately and that there is insufficient time to observe these procedures without endangering public health, welfare or the environment. In such cases, the OSC may consider temporary measures (e.g., interim storage) to allow time to locate an acceptable facility. Where these attempts fail, the OSC should choose the action that best protects human health and the environment. This exemption for emergency removal actions was expressly discussed in the Conference Report on SARA (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986)).

C. Pre-SARA vs. Post-SARA Actions

Prior to the enactment of SARA, EPA considered a number of factors concerning the condition and operation of off-site facilities before sending wastes from CERCLA-funded or -authorized cleanups to such sites; these factors were set out in the May 1985 off-site policy. In passing SARA in 1986, Congress reaffirmed the rationale of this policy by establishing specific criteria (CERCLA section 121(d)(3)) for certain off-site transfers of CERCLA cleanup wastes. However, it specified in section 121(b)(1) of SARA that the new criteria would apply only to response actions initiated after the date of enactment of SARA, leaving in place the May 1985 criteria for wastes from pre-SARA actions. Although section 121(d)(3) does impose criteria on future cleanup actions that are stricter than those previously imposed, the failure to apply such criteria to pre-SARA actions indicates a judgement that the prior off-site criteria provided an adequate level of protection of health and the environment, and that applying a new set of acceptability criteria to facilities already receiving CERCLA cleanup wastes would disrupt and delay ongoing cleanup activities. Thus the proposed rule covers two classes of actions: those based on "pre-SARA" decision documents and those based on "post-SARA" decision documents. As already mentioned, each class is subject to slightly different procedures for off-site transfer.

Post-SARA actions result from CERCLA decision documents signed or consent decrees lodged after October 17, 1986 (post-SARA decision documents), and are subject to the requirements of SARA as interpreted by this rule.¹ Facilities receiving wastes from post-SARA actions must meet the compliance criteria described in section V.A.1. as well as the release criteria outlined in V.A.2.b.

Pre-SARA actions result from CERCLA decision documents signed or consent decrees lodged prior to October 17, 1986 (pre-SARA decision documents). These actions were subject to the May 1985 and November 1987 policies which will be superseded by this rule. Facilities receiving wastes from pre-SARA actions must meet the compliance criteria described in section V.A.1. of this preamble, but are subject to different release criteria than facilities receiving post-SARA wastes as described in section V.A.2.c.

D. RCRA Section 7003 Actions

The May 1985 off-site policy applied to actions taken under RCRA section 7003 and the revised policy issued November 13, 1987, continued to apply the off-site requirements to section 7003 actions. However, CERCLA does not require extension of the rule to these actions. After reviewing the implications of continuing to apply the off-site requirements to section 7003 actions, EPA plans to drop the requirement that the off-site criteria apply to actions taken under section 7003 for the following reasons. The original policy included wastes from section 7003 actions because at that time most section 7003 actions were taken jointly with actions under a CERCLA authority (e.g., CERCLA 106/RCRA 7003 actions) and it was appropriate to extend the policy to section 7003 actions which were essentially CERCLA actions. Use of joint RCRA/CERCLA actions involving section 7003 are no longer a common practice. Rather, EPA plans to use the section 7003 authority to promote voluntary cleanup and corrective action at sites which do not qualify for the NPL, and at facilities with RCRA permits where a major permit modification would otherwise be

required. The Agency is concerned that imposing the off-site requirements on actions taken under section 7003 may act as a disincentive to parties considering voluntary cleanups under this authority.

E. States' Role

EPA is proposing that determinations of acceptability to receive an off-site transfer of CERCLA cleanup wastes be made by EPA or by the relevant State, if that State has demonstrated to EPA the capacity to make such determinations.

CERCLA section 104(d)(1)(A) provides as follows:

A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State * * * has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State * * * to carry out such actions.

This provision provides a mechanism by which States that demonstrate adequate capability may carry out response actions authorized under CERCLA section 104. Section 104 actions include "arrang[ing] for" removal or remedial action (see CERCLA section 104(a)(1)), which may include the off-site determination function. In addition, the Agency believes that the determination of whether sites are acceptable to receive wastes from CERCLA funded or authorized response actions is an integral component of the selection of remedy decision, and therefore, is an integral part of the response action.²

EPA believes that allowing qualifying States to make the off-site determinations makes sense as a matter of policy. States often have the most direct knowledge and responsibility over the potential receiving facilities within their respective jurisdictions, and thus may be in the best position to make the findings required under the off-site rule.

In addition, no CERCLA remedial actions may be provided by the President under section 104 if a State does not, pursuant to section 104(c)(3)(B), "assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of Subtitle C of the Solid Waste Disposal Act [RCRA] for any necessary off-site storage, destruction, treatment, or

secure disposition of the hazardous substances." Thus, allowing States to make off-site acceptability determinations within their jurisdictions would directly support the State's site-specific response program. Further, in the context of providing the assurance required in section 104(c)(3)(B), States would tend to have already made many of the findings necessary to support off-site determinations.

1. Demonstration of State Capability

For the purposes of this rule, it is EPA's opinion that a State that has been authorized to carry out the base program under RCRA and to impose corrective action under section 3004(u) of RCRA (hereinafter an "authorized State"), has the capability to make off-site determinations at RCRA facilities within that State. (Determinations involving non-RCRA facilities would continue to be made by EPA.) Having the authority to initiate corrective action under section 3004(u) of RCRA is of special importance, because the decision of whether to send CERCLA cleanup waste to a RCRA facility is heavily dependent upon whether releases at the facility are being controlled by a RCRA corrective action program. (See, e.g., CERCLA section 121(d)(3)(B), relating to RCRA land disposal facilities.)

The Agency requests comment on whether EPA should also require States to be authorized for the implementation of the land disposal restrictions portion of RCRA (section 3004 (d), (e), (g), and (j)), or other parts of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that amended RCRA, in order to demonstrate their capacity to make off-site acceptability determinations.

Under this proposal, a State may qualify to make off-site acceptability determinations only with respect to facilities within the State (to which the RCRA corrective action authorities apply). Those determinations would apply with equal force to wastes from out-of-State response actions. The acceptability determination made under the off-site rule is in no way affected by the State of origin of the waste. Similarly, off-site acceptability determinations made by qualifying States will have effect whether the specific response actions generating the waste was taken under the authority of sections 104, 106 or 120 of CERCLA, section 311 of CWA, or taken pursuant to some other authority financed in whole or in part by CERCLA's Superfund.

¹ In order not to delay ongoing actions or disrupt actions taken shortly after the enactment of SARA, Congress provided, in section 121(b)(2) of SARA, that actions resulting from decision documents signed or consent decrees lodged within the 30-day period following SARA enactment were merely required to comply with the post-SARA criteria in section 121(d)(3) of CERCLA "to the maximum extent practicable." This level of compliance must be certified in writing by the Administrator in the decision document or consent decree.

² CERCLA section 104(c)(4) specifically requires that section 104 remedial actions be carried out in accordance with section 121 of the Act.

2. Cooperative Agreement Requirement

States need not adopt regulations that are equivalent to those in this proposed rule in order to qualify to make off-site determinations. However, they may make such determinations only pursuant to a cooperative agreement under section 104(d)(1)(A), in which the State commits (1) to follow the off-site rule's requirements in making determinations of acceptability, and (2) to consult with EPA in order to ensure that determinations are made in a consistent manner nationwide.

Off-site determination tasks will generally be included in Core Program Cooperative Agreements ("CPCAs"). CPCAs are specifically designed to provide States with the opportunity to participate fully in EPA's efforts to implement CERCLA, and to assist States in the effective implementation of their CERCLA programs. In the Conference Report on SARA, the discussion of amendments to section 104(d) reflects Congressional intent to increase the scope of Cooperative Agreements.

Included within the class of activities that may be the subject of Cooperative Agreements are those associated with the overall implementation, coordination, enforcement * * * and administration of remedial efforts as authorized by this Act. [H. Rept. 962, 99th Cong., 2d sess. at 195 (1986).]

States that have authorization for the RCRA base program only would not be able to make off-site determinations on their own. However, they could make findings as to the compliance status of RCRA facilities (the relevant EPA Region would make findings regarding any releases at the facilities). EPA would then make the final determination based on all available information, and would be the agency responsible for that determination. No cooperative agreement would be required under these circumstances.

The Agency also considered the approach of having the EPA Regional Offices make all off-site acceptability determinations. This approach would have the advantages of more easily assuring consistent application of the rule, and avoiding conflicts between the Region and the State regarding the acceptability status of a facility. The Agency decided against proposing this alternative because the States are often more familiar with facilities within their State than is the Region. (States generally maintain a strong oversight presence at their larger facilities through frequent inspections and site visits.) In addition, allowing States to make this decision is consistent with EPA's overall goal of having States implement the hazardous waste program.

The Agency specifically requests comment on whether qualifying States should make off-site acceptability determinations as proposed, or whether EPA should exercise that decision-making authority through its Regional Offices.

V. Determining Acceptability

A. Acceptability Criteria

The following criteria will be used to determine the acceptability of facilities to receive wastes from CERCLA-authorized or -funded response actions.

1. Compliance Criteria

a. *Receiving Unit.* The Agency is defining a receiving unit to be any unit that directly receives CERCLA off-site waste: (1) For treatment to standards specified in 40 CFR Part 268, Subpart D, including any pre-treatment or storage units used prior to treatment; (2) for treatment to reduce substantially its mobility, toxicity or persistence in the absence of a defined treatment standard, including any pre-treatment or storage units used prior to treatment; or (3) for storage or ultimate disposal of waste not subject to the previous criteria.

b. *Facility.* CERCLA section 121(d)(3) provides that CERCLA cleanup wastes should be transferred only to a "facility" which is operated in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act [RCRA] (or, where applicable, in compliance with the Toxic Substances Control Act [TSCA] or other applicable Federal law) and all applicable State requirements.³ The term "facility" as it is used in that context could refer to any one of a number of concepts. For example, Congress could have intended that in assessing compliance with any of the above statutes, EPA apply the definition of "facility" adopted by the applicable law. However, TSCA, for example, does not even employ the concept of "facility," and its implementing regulations do not expressly define the term. Similarly, State laws may not define "facility" at all, or if they do, the definitions may differ from law to law and state to state. If more than one law or requirement applies to a single area of land, there may be conflicting definitions of "facility." Accordingly, in light of the fact that one of the laws explicitly referenced by section 121(d)(3) does not define "facility" at all, and in light of the potential for conflict between the definitions of "facility" adopted by other laws, it seems unlikely

that Congress intended EPA to look to each individual law or requirement in defining this term.

It is also possible that Congress intended the term "facility" in the first sentence of section 121(d)(3) to mean a facility as defined by RCRA.⁴ Indeed, the term "facility" is used in section 121(d)(3)(B), and in the context of that subparagraph, it is clear that the term means a RCRA facility. It may be logical to assume that a term is meant to be defined consistently throughout a single provision, thus suggesting that "facility" in the first sentence of section 121(d)(3) also refers to a facility as defined by RCRA. However, it is not clear why the RCRA definition of facility would be thought appropriate for purposes of assessing compliance with the provisions of other laws, some of which, as noted above, may have very different concepts of the nature of a facility. Moreover, as discussed below, the language of the second sentence of section 121(d)(3) is distinct from that in the first. While the first sentence refers to a "facility," subparagraph (B) clearly refers to a "land disposal facility" and to the regulation of releases from such land disposal facilities under RCRA.

Alternatively, Congress could have intended the term "facility," as used in the first sentence of CERCLA section 121(d)(3), to mean a facility as defined in the CERCLA statute itself. Section 101(9) of CERCLA states that a "facility" is any "building, structure, * * * landfill, storage container, * * * site or area where a hazardous substance has been deposited, stores, disposed of, or placed, or otherwise come to be located." Facilities under CERCLA are not defined by property boundaries or ownership, as they are under RCRA; rather, they are defined by the placement or location of the waste material or contamination itself. In the case of a transfer of CERCLA off-site wastes to a facility, the most straightforward application of the CERCLA definition would be to interpret the "facility" as the unit or units at which the CERCLA off-site wastes have been "deposited" or "placed" for treatment, storage or disposal.

EPA recognizes that the definition of CERCLA section 101(9) may also extend to any area where hazardous substances migrate or "come to be located," and thus it could arguably be said to cover subsequent units at facilities where

³ Consistent with section 121(d)(2) of CERCLA, EPA interprets this requirement to refer to other applicable Federal and State environmental laws.

⁴ A "facility" is broadly defined under RCRA to include "all contiguous land, and structures * * * used for treating, storing, or disposing of hazardous waste * * * (including all) operational units." 40 CFR 261.10.

hazardous substances may migrate. However, the "come to be located" language appears to be designed to help effectuate the board remedial purposes of CERCLA, giving EPA the authority to clean up contamination when it has spread from the original source. That part of the CERCLA section 101(9) definition does not apply in this context, where off-site wastes have been specifically "placed" or "deposited" at treatment, storage or disposal units or facilities. Indeed, if Congress intended a CERCLA "facility" to mean, in all cases, that area at which wastes have "come to be located," then it would not have included alternative terms, such as "deposited," "placed," or "stored" in the definition.

Thus, under the CERCLA definition, the off-site "facility" would be the receiving unit or units where the CERCLA wastes have been placed or deposited. Other units at the same site which are unrelated to the treatment, storage or disposal of the CERCLA cleanup wastes, or which receive residuals from disposal units, from treatment units using Best Demonstrated Available Technology ("BDAT"), or from treatment units that reduce substantially the mobility, toxicity or persistence of the waste, would not be included within the definition of "facility" for the purposes of assessing compliance under this proposed rule.⁵

The plain language of the statute confirms EPA's discretion to define the "facility" to which the compliance provision applies. Section 121(d)(3) applies to activities occurring in the context of a "removal or remedial action." In selecting a removal or remedial action, EPA has broad discretion under CERCLA to identify how cleanup wastes should be managed and in what type of unit or facility. Indeed, the scope of the response action, as identified in the Record of Decision (ROD) or CERCLA decision document, defines the units to be used, and thus the units to be covered by the off-site requirements. Accordingly, it is within EPA's statutory authority to interpret the first sentence of CERCLA section 121(d)(3) to require that it is the receiving units that must be in compliance with applicable Federal and State requirements.

EPA's interpretation of "facility" in the first sentence of CERCLA section 121(d)(3) is also consistent with the

legislative purpose of that section.⁶ The legislative history of section 121(d)(3) states that CERCLA off-site response actions "must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow" (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986)). This purpose can be accomplished by ensuring that the unit(s) at which CERCLA wastes are received for treatment, storage or disposal are in compliance with applicable Federal and State requirements. It should be noted that violations affecting the entire waste management operation (such as failure to comply with financial requirements, inadequate closure plan, inadequate waste analysis plan, inadequate inspection plan, etc.) are considered to be relevant violations which affect the receiving unit.

EPA's interpretation would also further a second Congressional objective, expressed elsewhere in CERCLA section 121, which directs the Agency to select site remedies which utilize "permanent solutions and alternative treatment technologies to the maximum extent possible" (CERCLA section 121(d)(1)). Nationwide, there are only a small number of state-of-the-art incinerators and alternative treatment technologies that are presently available to treat hazardous wastes and substances. Reading a broad definition of "facility" (such as the property-wide definition under RCRA) into CERCLA section 121(d)(3) would preclude the use of fully complying units—like incinerators—at sites with other violations, even if such violations pertained to units or processes not associated with the storage, treatment, or disposal of CERCLA wastes; this could threaten available incineration capacity, and therefore Congressional goals. Rather, today's interpretation results in a better balance of competing Congressional objectives: that CERCLA waste goes to receiving units that are in compliance and that this waste be disposed of using permanent remedies and alternative treatment technologies to the maximum extent possible. It also has the advantage of tying compliance requirements to those units that are logically related to the management of CERCLA waste, rather than extending it to other parts of a site not involved in or

related to the management of CERCLA waste.

The foregoing approach to defining "facility" is not inconsistent with the second sentence of CERCLA section 121(d)(3), which provides that when CERCLA cleanup wastes are transferred off-site to land disposal facilities (1) the unit to which the waste is transferred must not be releasing, and (2) all releases from other units must be controlled under a RCRA corrective action program. Unlike the first sentence of section 121(d)(3), which refers to "facility," the second sentence specifies "land disposal facility," which the statute makes clear is a reference to a RCRA facility. Specifically, the statute provides in the second sentence of section 121(d)(3), that releases from other units at a land disposal facility must be controlled by a corrective action program approved under RCRA; as a matter of law, RCRA corrective action applies only to RCRA facilities. In addition, section 121(d)(3) (A) and (B) make a clear distinction between a "unit" and a "facility," a distinction most commonly recognized in the context of RCRA.

In light of the above, EPA believes that it is appropriate to define "facility" as it is used in the first sentence of section 121(d)(3) as the receiving unit(s) which directly treats, stores or disposes of the CERCLA off-site waste. It is also appropriate, in the second sentence of section 121(d)(3), to define "land disposal facility" consistent with RCRA, to include both the receiving unit (for purposes of implementing the no release provision in section 121(d)(3)(A)) as well as other units (for purposes of section 121(d)(3)(B)). EPA believes that this is consistent with the principles of statutory construction and with legislative intent.

c. Relevant Violations. CERCLA section 121(d)(3) and the original and revised off-site policies require that hazardous substances, pollutants, or contaminants transferred off-site for treatment, storage, or disposal during a CERCLA response action be transferred to a facility operating in compliance with RCRA, TSCA, or other applicable Federal law and with State law. However, in evaluating "compliance," EPA has recognized that the comprehensive regulations governing waste management include requirements of differing importance. For example, in the RCRA Enforcement Response Policy (OSWER Directive #9900.0, December 21, 1984, and subsequent revisions), the Agency set out guidance for treating violations of certain requirements more seriously

⁵ Note that subparagraph (B) of section 121(d)(3) does provide that all releases from non-receiving units at RCRA land disposal facilities must be controlled by a RCRA corrective action program before the facility can be used for the transfer of CERCLA off-site wastes.

⁶ Where the language of a statute is unclear or ambiguous, it is appropriate to define the term in a manner that best effectuates what the Agency perceives to be the Congressional intent in enacting the provision. See *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

than others (Class I vs. Class II violations). Congress also acknowledged this distinction in the legislative history of this section: "In implementing this provision, the Agency should give appropriate consideration to the significance of the violations, including Class I violations as compared with minor paperwork violations," H. Rept. 962, 99th Cong., 2d sess., at 248 (1986). For these reasons, EPA believes that the assessment of compliance required by statute should focus on whether there are violations of the more important provisions. Therefore, any determination of noncompliance should be based on "relevant violations," which the Agency is defining in this regulation as those that are a significant deviation from regulations, compliance order provisions, or permit conditions, including those designed to: ensure that hazardous waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases; or compel corrective action for releases. Class I violations, as defined in the RCRA Enforcement Response Policy, are the type of violations that will generally be considered relevant violations.

CERCLA section 121(d)(3) also specifically requires off-site facilities to be in compliance with other applicable Federal and State requirements. EPA interprets "applicable State requirements" consistent with section 121(d)(2) of CERCLA in that they must be legally enforceable and generally applicable. Relevance of violations of other applicable Federal and State laws will be judged using criteria similar to those used for RCRA Subtitle C facilities, considering the significance of the requirement that is being violated; the extent of deviation from the requirement; and the potential or actual threat to human health or the environment. Criminal violations of any type will be considered relevant violations at the time an indictment is issued and may, in appropriate cases, be considered relevant before an indictment is issued.

d. Minimum Technology Requirements. In order to be acceptable to receive hazardous wastes from a CERCLA cleanup under this rule, a RCRA Subtitle C land disposal unit would also be required to demonstrate compliance with the minimum technology requirements of RCRA section 3004(o), unless the unit had been granted a waiver under the section.

Although under the RCRA program, only new RCRA land disposal units (and

such units at expanded facilities) must meet the more rigorous minimum technology requirements, EPA believes that it is appropriate to apply them to units receiving hazardous wastes from CERCLA cleanups under the off-site rule. EPA believes that such an approach furthers the general purposes of CERCLA section 121(d)(1) to select a remedial action that utilizes permanent solutions to the maximum extent practicable, and to take into account, when selecting the remedy, "the long-term uncertainties associated with land disposal" and the potential for future remedial action costs if the chosen remedy in question were to fail. As the Conference Report on SARA stated:

The response and remedial actions taken by EPA under this program must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow. *This is an especially important responsibility when the waste material is removed to a land disposal facility that, if improperly operated in violation of RCRA requirements, could contaminate ground water or surface water and thereby present threats to human health and the environment.* (H. Rept. 962, 99th Cong., 2d sess., at 248 (1986) (emphasis added).)

2. Release Criteria

a. Definition of Release. The term "release" is defined by section 101(22) of CERCLA and § 300.6 of the NCP. As such, a release is considered to be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

EPA is interpreting the term "release" in CERCLA section 121(d)(3) to include "substantial threat of release," consistent with the definition in § 300.6 of the NCP.⁷ The NCP definition is especially significant because that document provides the procedures for taking response actions at CERCLA sites, including the decision of which facility should receive wastes from CERCLA response actions (this proposed rule will be part of the NCP).

Moreover, the EPA believes that it is important to take into account information as to a substantial threat of release as well as an actual release in making off-site transfer decisions. If the Agency has information indicating that a release is threatened at a potential receiving unit, a decision to authorize the transfer of wastes to that site would

be poor public policy, and not protective of human health and the environment.

The Agency has interpreted the concept of release as used in section 121(d)(3) of CERCLA not to include *de minimis* releases, consistent with the legislative history.⁸ *De minimis* releases are those that do not adversely affect public health or the environment, such as releases to the air from temporary opening and closing of bungs, releases between landfill liners of 5 gallons/acre/day or less, or stack emissions from incinerators not otherwise subject to Clean Air Act permits. The Agency further believes that Federally-permitted releases, as defined in CERCLA section 101(10), are generally controlled or monitored under another Federal program and thus should not be routinely included within the concept of "release" for the purposes of section 121(d)(3). For example, the presence of a Federally-permitted water discharge point should not preclude EPA's ability to use a facility for the receipt of CERCLA wastes. This would also apply to releases authorized under Federal programs delegated to the State. However, if that release comes to constitute a threat to human health or the environment, the release can and should be considered under this rule.

Although CERCLA section 121(d)(3) (A) and (B) refer to "hazardous wastes" and "hazardous constituents" only, the provisions of the proposed rule would apply to releases of all CERCLA hazardous substances. The Agency believes that this is appropriate for two reasons: first, to allow the transfer of CERCLA wastes to units leaking hazardous substances such as radionuclides, asbestos, captan, diquat, or malathion (which are not regulated hazardous wastes or hazardous constituents under RCRA) would be clearly contrary to Congress' intent that CERCLA "not create more serious problems" (H. Rept. 962, 99th Cong., 2d sess., at 248 (1986)); second, common sense dictates that the Agency not put CERCLA wastes into a known releasing unit, regardless of the substances being released. Thus EPA believes it is both logical and appropriate to apply today's proposed rule more broadly to cover units that have uncontrolled releases of any CERCLA hazardous substance.

⁷ The SARA Conference Report provides as follows: "The addition of 'soil' to the requirements of (CERCLA section 121)(d)(3)(A) is intended to preclude the transfer or disposal of hazardous wastes or constituents thereof into unlined units and lined units with releases other than *de minimis* releases into the soil." H. Rept. 962, 99th Cong., 2d sess., at 248 (1986) (emphasis added).

⁸ The Agency's interpretation of the term "release" was discussed in the "Interpretation of Section 3006(h) of the Solid Waste Disposal Act" (J. Winston Porter, December 16, 1985).

EPA believes that in some cases it may not be necessary to have actual sampling data to determine whether there is a release or a substantial threat of a release. An inspector may find other evidence that a release has occurred, such as a broken dike or feed line at a surface impoundment. Less obvious indications of a release might also be adequate to make the determination. For example, EPA or a qualifying State ("the responsible Agency") could have sufficient information on the contents of a land disposal unit, the design and operating characteristics of the unit, and/or the hydrogeology of the area in which the unit is located to conclude that there has been a release to ground water, surface water, soils, land surface or air.

RCRA interim status facilities that trigger groundwater assessment monitoring requirements (40 CFR 265.93) and RCRA-permitted facilities that trigger compliance monitoring requirements (40 CFR 264.99) are not automatically presumed to have releases. The RCRA regulations provide for verification of the initial release determination through additional sampling to ascertain whether the statistically significant difference which triggered the enhanced monitoring was the result of problems such as laboratory error. Upon verification of the data, the facility must initiate assessment or compliance monitoring. The responsible Agency should evaluate the data which led to assessment or compliance monitoring and any other relevant information, including that gathered from applicable compliance inspections before making its determination under this rule. Of course, if the responsible Agency has data sufficient to make a determination of a release and unacceptability prior to (or during) a facility's participation in the assessment or compliance monitoring program, the responsible Agency may do so at that time.

b. Release Criteria for Facilities Receiving Post-SARA Waste. CERCLA section 121(d)(3)(A) requires that CERCLA wastes resulting from post-SARA decision documents must not be transferred to a unit at a RCRA Subtitle C land disposal facility that is releasing any hazardous waste or hazardous constituent into the ground water, surface water, or soil. The term "land disposal facility" means any RCRA facility at which a land disposal unit is located, regardless of whether the land disposal unit is the receiving unit (land disposal units include landfills, surface

impoundments, land treatment units, and piles as defined in 40 CFR 260.10).⁹

Although CERCLA section 121(d)(3)(A) specifically refers to releases to "the ground water or surface water or soil" only, it is the opinion of EPA that as a matter of policy, the Agency should also refrain from sending CERCLA cleanup wastes to a site if the receiving unit is releasing hazardous substances into the air. Such an approach is consistent with the goals of the policy and with environmental protection.

Today's proposed rule would also apply this restriction to RCRA storage and treatment facilities whose units are intended to receive CERCLA wastes resulting from post-SARA decision documents. Although CERCLA sections 121(d)(3)(A) and (B) specifically mention RCRA "land disposal facilities" only, the Agency believes that the storage and treatment of RCRA hazardous wastes pose similar threats of releases that could harm human health or the environment even though the wastes are managed differently. EPA believes that it is appropriate to refrain from sending CERCLA cleanup wastes to leaking units at RCRA treatment or storage facilities, consistent with the requirement in CERCLA section 121(b)(1) to "select a remedial action that is protective of human health and the environment," and with the general environmental protection standard for response actions in CERCLA section 104(a)(1). Therefore, under the proposed rule, the Agency would not transfer CERCLA wastes to any RCRA Subtitle C treatment or storage facility, or to any facility that has a RCRA permit-by-rule under 40 CFR 270.60 (a), (b) or (c), if there are releases from the receiving unit (or, as discussed below, if there are environmentally significant releases from non-receiving units that are not controlled by corrective action).

CERCLA section 121(d)(3)(B) also specifically restricts the use of land disposal facilities that have releases at units other than those actually receiving CERCLA wastes. These "other units" are defined as all permitted or interim status units and other solid waste management units at a facility. Releases from other units at a land disposal facility must be addressed by a corrective action program approved by EPA or a State authorized for HSWA corrective action in an enforceable agreement under the applicable statute, in order for the facility to be considered

acceptable. This applies equally to Underground Injection Control ("UIC") wells where surface units are land disposal units with RCRA status (see 52 FR 45791, Dec. 1, 1987) as well as to publicly owned treatment works (POTWs) with land disposal units.

The requirement for a corrective action program is in lieu of a "no release" requirement and is specifically provided for in CERCLA section 121(d)(3)(B) for other units at land disposal facilities. This provision recognizes that the corrective action process can be very lengthy. Requiring the corrective action process to be completed at other units could render the facility unacceptable for many years, potentially precluding an otherwise acceptable facility from receiving CERCLA waste.

For reasons discussed above, EPA is also proposing to set out requirements to control releases from non-receiving units at non-land disposal facilities that receive CERCLA cleanup wastes, including RCRA treatment, storage and permit-by-rule facilities. Under the proposed rule, the standard of "environmental significance"—developed under the May 1985 Off-site Policy—would be applied. Releases from non-receiving units at these facilities must be determined not to be environmentally significant, or must be addressed by a corrective action program in an enforceable agreement under the applicable statute, in order for the facility to be acceptable. EPA is applying the standard of environmental significance to these units in lieu of the more restrictive "any release" standard imposed on other units at Subtitle C land disposal facilities, because the Agency believes this standard is adequate to protect human health and the environment, and to meet the objectives of this rule.

Facilities other than RCRA Subtitle C facilities are not addressed in CERCLA section 121(d)(3)(A) or (B), and thus no release criteria are statutorily required. However, EPA believes that it is appropriate not to use such facilities for the receipt of wastes from CERCLA-authorized or -funded response actions if the Agency receives information, or discovers during the course of a compliance inspection, that there are environmentally significant releases of hazardous substances anywhere on the site. Of course, if such releases are addressed by a corrective action program, then the facility may be deemed acceptable.

POTWs that do not accept RCRA hazardous wastes (i.e., POTWs that do not have a RCRA permit-by-rule) are not

⁹ See, e.g., the RCRA Codification Rule, 50 FR 2670 (July 15, 1985); the RCRA Land Disposal Regulations, 47 FR 32274 (July 26, 1982); and 49 FR 5854 (February 15, 1984).

considered to be RCRA Subtitle C facilities. CERCLA wastes (other than RCRA hazardous wastes) that are transferred to a POTW must meet the appropriate pre-treatment standards.¹⁰ CERCLA wastes that are RCRA hazardous wastes may only be transferred to a POTW that has a RCRA permit-by-rule.

c. Release Criteria for Facilities Receiving Pre-SARA Waste. The May 1985 policy, from which the acceptability criteria for facilities receiving CERCLA wastes resulting from pre-SARA decision documents are derived, does not refer specifically to releases. Rather, it directs that CERCLA waste not be sent to a facility if there are environmental conditions at the facility (other than relevant violations) that pose a significant threat to public health, welfare or the environment or affect the satisfactory operation of the facility ("relevant conditions"). Examples of environmental conditions that may be considered relevant conditions include: environmentally significant releases of hazardous wastes, hazardous constituents or hazardous substances to ground water, surface water, soil, ground surface or air; a high degree of hazard posed by the location of the facility; the facility's ability to manage safely the volume and/or toxicity of the waste.

The responsible Agency will evaluate releases and other environmental conditions at the facility to determine whether they constitute relevant conditions under this rule. Where such relevant conditions exist, a corrective action plan under the applicable statute is required before the facility may be considered acceptable to receive CERCLA cleanup wastes.

B. Basis for Determining Acceptability

To determine the acceptability of a facility to receive an off-site transfer of CERCLA waste, the responsible Agency will follow certain procedures to examine the facility's status with respect to both compliance and releases. States not qualifying to make the off-site determination may submit findings to EPA concerning a facility's compliance status.

1. Compliance Determination

To determine compliance status, the responsible Agency will direct the inspection of a facility no more than six months prior to its receiving CERCLA

waste. This applies to facilities accepting CERCLA wastes resulting from either pre- or post-SARA decision documents.

2. Release Determination

Under the May 1985 off-site policy, the decisionmaker had the discretion to use a facility that had releases, unless the releases constituted environmental conditions that affected the satisfactory operation of the facility. This provision still applies to wastes from pre-SARA decisions, and the responsible Agency should use the compliance inspection noted above as the means of identifying any relevant conditions.

For post-SARA decisions, SARA now requires that "all releases from other units at a land disposal facility" be controlled under a corrective action program. This rule would similarly require that all "environmentally significant" releases at non-receiving units at RCRA Subtitle C facilities that are not land disposal facilities be controlled. To best effect these requirements, EPA believes it is important to assess whether any units at a site have releases, if that information is not already known, before transferring wastes to that site.

For all RCRA Subtitle C facilities, the responsible Agency should perform a RCRA Facility Assessment (RFA) or other facility-wide investigation (e.g., a CERCLA Preliminary Assessment/Site Investigation (PA/SI)) at the site to determine if a release has occurred or if there is a substantial threat of a release. If a release has been identified outside of the scope of an RFA or equivalent investigation, completion of such an investigation is not necessary prior to initiating a corrective action program. In such situations, the corrective action program should be designed to include a facility-wide investigation. All RCRA land disposal facilities must also have received a comprehensive ground-water monitoring evaluation (CME) or an operation and maintenance (O&M) inspection within the year prior to receipt of waste.

For non-Subtitle C facilities, the compliance inspection should also serve to identify any environmentally significant releases.

VI. Notification of Acceptability

A. Background

It is EPA's opinion that the decision to send wastes from a CERCLA response action to a particular off-site facility, or to send them off-site at all, is a legitimate business decision within the Agency's discretion. EPA recognizes that a valid RCRA Subtitle C permit

creates the opportunity for a commercial facility to receive those wastes specified in the permit. However, the permit does not guarantee the use of the facility by the Government any more than it guarantees use of the facility by a private waste generator. EPA must remain free to decide whether and where to send wastes from CERCLA-funded or -authorized cleanups in order to protect its own interests (e.g., limiting the Government's potential liability for harm arising from the operation of the receiving facility and not contributing to existing environmental problems).

EPA recognizes that there will be instances where a facility will be deemed unacceptable to receive CERCLA wastes based on conditions that may not constitute a violation of RCRA (e.g., observed releases of hazardous substances). However, SARA specifically called upon the Agency to exercise a high level of care and not to use facilities experiencing uncontrolled releases, even if remediation of that release is not immediately required under RCRA regulations. The language of CERCLA section 121(d)(3) (A) and (B) provides a conservative standard: if EPA determines that there are releases at a RCRA land disposal facility that have not been addressed by a corrective action program, then EPA may not send wastes there.

Some companies have already expressed concern that decisions by EPA not to use a facility may have a secondary effect on public confidence with regard to that facility; however, EPA believes that any such secondary effects will be minor. Any stigma resulting from the Agency deciding not to use a facility to receive CERCLA wastes due to a compliance problem would arise even without that decision, due to the Notice of Violation and the enforcement action that would follow under RCRA (or other applicable statutes). An EPA decision not to use a facility is simply a response to, and recognition of, the finding of a violation. In the context of uncontrolled releases that technically are not RCRA violations, a decision not to use a facility indicates that EPA believes that there is a release or a significant threat of release at the facility warranting investigation, and based on the conservative standard set by Congress in CERCLA section 121(d)(3) (A) and (B), EPA is exercising its discretion not to use such facilities until the releases are addressed. When evaluated in context, then, the EPA decision is simply a conservative business decision not to use a facility with known or potential problems. It is also reasonable to

¹⁰ Criteria for evaluating whether or not to send CERCLA cleanup wastes to a POTW have been discussed in an EPA memorandum dated April 15, 1988, entitled, "Discharge of Wastewater from CERCLA Sites into POTWs."

assume that Congress, by requiring EPA to make such conservative decisions, understood that facilities—including those that are in compliance with RCRA but have some uncontrolled releases—would be identified by EPA as unacceptable to receive CERCLA cleanup wastes.

B. Notice and Review Procedures

The only statutory requirement for notice and review associated with EPA's off-site transfer decisions appears in CERCLA section 121(d)(3): "The President shall notify the owner or operator of such a facility of determinations under this paragraph." However, EPA has established additional procedural protections for affected facilities that are intended to ensure that off-site policy determinations are made in a careful and consistent manner, based on knowledge of available facts. This is consistent with the approach recommended in the Conference Report on SARA, which provides the following:

The President must notify owners or operators of facilities of any determination under this paragraph * * *

The Managers further expect that the owner or operator of a facility will be provided with an opportunity to meet informally prior to a final determination of eligibility except with regard to emergency removal actions. The Administrator is expected to establish post-determination procedures for resolving disputes related to determinations made under subparagraphs (A) and (B) * * *. Until the conclusion of such rulemaking, the Administrator shall implement these provisions on the basis of the statutory terms. (H. Rept. 962, 99th Cong., 2d sess. at 248 (1986).)

In keeping with Congressional intent, upon determination that a relevant violation and/or release has occurred, the responsible Agency will notify the facility owner/operator in writing of the determination and of the effect of the determination under this rule.

In addition, the November 1987 revised off-site policy provides a 60-day review period during which the owner/operators of receiving facilities can meet with responsible EPA Regional Office officials (or, if appropriate, State officials) to discuss alleged violations or releases while retaining their acceptability under the Off-site Policy. If after receiving facts and comments, the responsible Agency still considers the facility to be unacceptable to receive CERCLA wastes, the facility has the opportunity to request that the EPA Regional Administrator (RA) (or appropriate State official) review the unacceptability determination. Under the November 1987 policy, the RA or appropriate State official may use

discretion in deciding whether to review the determination.

Today's proposed rule largely adopts these procedures but modifies them by making review by the RA (or appropriate State official) available to all requesting parties. EPA is proposing this change in the interest of assuring accuracy and consistency of decisions. Giving facilities the opportunity to elevate disagreements to the highest official in the EPA Region (or authorized State Agency) provides access to a second objective decisionmaker, who brings a fresh perspective to the facts presented at the informal conference.

The specific review activities provided under the proposed rule are as follows. The notice of unacceptability should be issued as soon as possible after the findings of a relevant violation or release, and should clearly state whether it applies to pre-SARA wastes, post-SARA wastes, or both. It should also clearly state the units or units to which the notice applies. Within 10 calendar days from the time the responsible Agency issues a notice, the owner/operator has the opportunity to request an informal conference with the responsible Agency to discuss the basis of the underlying violation or release determination, and its relevance to the facility's acceptability to receive wastes from CERCLA-authorized or -funded response actions. Any such meeting should be scheduled to occur within 30 calendar days of issuance of the notice. The owner/operator also has the option of submitting written comments within 30 calendar days from the date of the notice, in lieu of requesting an informal conference. After the informal conference or the submittal of written comments, the responsible Agency will inform the owner/operator in writing whether the information provided is sufficient to support a determination of acceptability. If not, transfer of CERCLA waste to the facility will cease on the 60th calendar day after issuance of the original notice.

The owner/operator may also request, within 10 calendar days of hearing from the responsible Agency after the informal conference or submittal of written comments, that the RA or appropriate State official review the determination, if possible, within the 60-calendar-day period from the issuance of the notice of unacceptability. The RA or State official may conduct such a review based upon the record compiled to date or by means of a conference. Such a review does not automatically stay the determination but the responsible Agency may use its discretion to extend the 60-day period if it needs more time to review information

presented. The Agency believes this discretionary authority may be necessary in situations where additional time is needed to confirm an unacceptability determination, such as waiting for laboratory results, or to review complex information presented during the conference or in written comments.

EPA believes that the time period provided for review and opportunity to rebut the Government's findings satisfy the three majors underlying the Agency's provision of the 60-day review period: Congressional intent, due process concerns, and considerations for the efficient management of CERCLA cleanup wastes.

First, the 60-day period with recourse to two separate levels of decisionmakers fully protects the rights of affected facilities' owner/operators to due process. It also responds to the intent in the legislative history for a significant review period. Although alternatives have been considered, the Agency believes that a longer or more complicated dispute resolution process could result in situations where wastes could continue to be sent to facilities with unaddressed violations or releases during periods up to or exceeding several months, clearly in opposition to Congressional intent and contrary to the need for relatively quick decisions as to what off-site locations to use for CERCLA waste disposal.

Further, the 60-day period was also selected based on the need for the efficient management of CERCLA cleanup wastes. EPA is concerned that if all off-site unacceptability determinations were immediately effective, then many CERCLA cleanups would be disrupted, with truckloads of wastes prevented from reaching the designated management point, and forced to return to the original CERCLA site. The establishment of a 60-day period before the determination takes effect provides the Agency with adequate time to identify alternate management options and to accomplish the closure of the original contract without unreasonable increases in costs.

However, there may be situations where the responsible Agency decides that a facility's unacceptability is immediately effective. This could occur in situations such as, but not limited to, emergencies at the facility (e.g., fires or explosions), egregious violations (e.g., criminal violations), or other situations that render the facility incapable of safely handling CERCLA waste. Egregious violations include criminal violations where a criminal indictment has been issued; repeated violations of

statutory or regulatory requirements indicating that a facility is unable to safely manage wastes; refusal to comply with outstanding orders or decrees calling for compliance or corrective actions; and violations that result in an immediate threat to human health or the environment. A Class I violation of RCRA in and of itself generally will not trigger immediate unacceptability unless it meets one of the above criteria or otherwise renders the unit incapable of safely handling wastes.

In case of either an extension or immediate unacceptability, the facility should be notified as quickly as possible.

Implementation of this notice provision does not replace existing enforcement mechanisms under RCRA or CERCLA nor does it relieve the Regions or States of the duty to take appropriate enforcement action under RCRA or CERCLA. This notice provision shall be applied only in concert with section 300.440 of the NCP. It does not create additional rights to notice or review of violations in other contexts.

C. Administrative and Judicial Appeals

EPA has also been considering the issue of how the offsite policy should be applied in situations where a facility has been determined to be acceptable to receive off-site wastes based on its implementation of corrective action to control releases at a facility, but that action is interrupted by a lengthy administrative or judicial challenge concerning the underlying corrective action or the need to perform additional corrective action. EPA is concerned that a decision to stay the off-site rule during such administrative appeals (or court challenges) would act as an incentive to parties to file dilatory appeals and, equally troubling, would result in situations where EPA continued to send CERCLA wastes to facilities with releases but no ongoing corrective action program. Therefore, under the proposed rule, if the filing of an administrative or judicial challenge to a corrective action requirement interrupts a program to control releases at a facility, it may be appropriate to issue an off-site unacceptability determination.

Some parties have argued that at least in the administrative context, as long as a RCRA facility is subject to a permit that provides for some corrective action, any releases at the facility should be considered to be under a corrective action "program" and thus "controlled," even during those times when the facility is appealing modifications to the permit that would initiate or require subsequent phases of corrective action

(see 40 CFR 270.41 and 124.5).¹¹ EPA disagrees with this expansive reading. First, as a purely factual matter, releases are not being "controlled" during the period of time required to resolve the appeal of such a permit modification, and the procedures inherent in such an appeal—including public comment, hearing, and an appeal to EPA's Chief Judicial Officer—lead to typical delays of 2-3 years. To broaden the interpretation of a corrective action program and of off-site acceptability to include long periods during which no corrective action is taking place would run counter to Congress' intent that EPA not send CERCLA wastes to facilities with uncontrolled releases, and would cause serious delays in corrective action at the site. It is important to note as well that the delays and procedures inherent in the permit modification process were established to protect the rights of permittees and citizens to challenge changes in the permit; they are wholly apart from the off-site policy determination. The business decision of where to send wastes under the off-site policy would turn not on whether the proposed permit modification is a proper one—as would be the debate in the RCRA permitting context—but on whether there is a corrective action program ongoing at the facility satisfying CERCLA section 121(d)(3) (A) and (B), such that EPA has confidence in sending CERCLA wastes to the facility under the strict and conservative standard Congress has established. This test would not be met during the period a permittee is challenging the need to take corrective action.

EPA acknowledges, however, that the application of the off-site policy while an appeal of a permit modification is pending may appear to place a burden on the permittee in certain cases. For example, the selection of a remedy under the RCRA permitting process is customarily accomplished by a permit modification under 40 CFR 270.41. Even if the facility agrees to implement the remedy proposed by EPA and not to appeal the permit modification that incorporates the selected remedy, a citizens' group may appeal that permit modification (e.g., on the grounds that

the remedy is not stringent enough). In such a case, the facility is willing to take corrective action, but the program has been halted by actions outside of the facility's control.

In an effort to balance EPA's need for an effective and independent off-site policy with the legitimate concerns of parties to pursue, or not be adversely affected by the pursuit of, legitimate appeals of the Agency's corrective action decisions, EPA is proposing a procedure for interim periods when such administrative (or judicial) challenges are pending. Under this procedure, a facility could remain acceptable to receive CERCLA wastes from EPA cleanups if: (1) It satisfies EPA that adequate corrective action will continue at the facility (e.g., through interim corrective action measures, ground-water monitoring, and/or site stabilization steps), or (2) it demonstrates to EPA the absence of a need to take corrective action measures over the short-term, interim period of the appeal (e.g., in light of site conditions and the more permanent corrective action scheduled to take place upon the resolution of the appeal). Such issues would be considered during the 60-day review period in the context of the informal conference and the RA's (or appropriate State official's) review. In this way, facilities appealing their permit modifications would have the choice of taking some corrective action during the appeal period (or showing that none is needed immediately) and thus remaining acceptable to receive CERCLA wastes from EPA cleanups, or of not taking any interim measures and potentially triggering CERCLA section 121(d)(3) (A) and (B) unacceptability. This procedure also allows EPA to protect its interests by retaining its ability to decide not to send its wastes to sites where uncontrolled releases of hazardous wastes were occurring, thereby protecting its interests and respecting the mandates established by Congress.

EPA is proposing to follow these procedures in the event of a judicial challenge to corrective action as well as an administrative one; however, the Agency believes that the prudential considerations that led the Agency to suggest this review process during permit modification appeals are less compelling for judicial challenges.

Off-site policy implications may also arise when dispute resolution procedures are invoked in a permit, order or decree, interrupting corrective action activities. EPA believes that these procedures, which are generally provided to resolve minor

¹¹ Note that this issue arises in the context of an appeal of a permit modification, and not in the context of an appeal of the initial issuance of an operating permit under RCRA. In the latter case, the appeal would stay the effectiveness of the entire permit, meaning that no permit would be in effect (40 CFR 124.16); thus, no argument could be made that releases at the facility are being controlled under the "corrective action program" of the permit, and that the facility is therefore acceptable under the off-site rule. An appeal of a permit modification would not stay the effectiveness of the underlying permit and its corrective action requirements, if any.

disagreements, present a smaller risk of causing delays in corrective action. Very often, such procedures run their course within the 60-day review period provided for under the proposed off-site rule. Thus, EPA believes that it is unnecessary to routinely trigger the off-site acceptability procedures in such cases; however, the Agency reserves the right to do so where the dispute resolution procedures threaten to significantly delay corrective action beyond the 60-day period.

VII. Re-evaluating Unacceptability

If a facility deemed unacceptable prevails on the merits in an administrative or judicial challenge to the finding of noncompliance or uncontrolled releases upon which the unacceptability determination was based, then the facility will be deemed to be acceptable under the proposed rule. EPA has limited this ground for returning to acceptability to prevailing "on the merits" in a challenge to Agency action. EPA believes that a judgment or decision based on procedural or technical grounds that does not contradict the finding of noncompliance or uncontrolled releases should not allow a facility to return to acceptability; to do otherwise would be inconsistent with the plain meaning of CERCLA section 121(d)(3) and the purposes of the off-site policy and proposed rule.

A. Compliance Criteria

Facilities with relevant violations may regain acceptability to receive pre- or post-SARA wastes by returning to physical compliance for violations cited in the notice. A facility that is determined to be unacceptable to receive CERCLA wastes under the off-site policy based on a "relevant violation" may not regain acceptability until it has returned to physical compliance.

In most cases, the facility can return to its previolation compliance condition by taking certain remedial actions, and the inquiry is relatively straightforward. For instance, in cases where the violation concerns the placement in a landfill cell of incompatible wastes that are deemed to pose an environmental hazard, the Agency will generally require the removal of the incompatible wastes from the cell in order to return to physical compliance.

Occasionally, however, there may be situations where it is not possible to physically "un-do" the results of a violation. For example, a facility that takes waste for which it is not permitted and treats it in a surface impoundment, incinerates it, or disposes of it in a

landfill in such a way that its removal would cause greater danger than leaving it in place, will not be able to retrieve the waste. EPA believes that in such cases, it is appropriate to consider the units to have regained physical compliance and hence be acceptable under the off-site rule if the following conditions are met:

- The violation does not render the unit unsafe or incapable of properly managing waste,
- The violation does not pose a threat to human health or the environment, and
- The facility has completed all actions that the responsible Agency determines are necessary to rectify the violation and prevent it from recurring.

In most cases this will mean that: (1) All legal proceedings, punitive actions and other obligations related to that violation are resolved, and (2) the facility has implemented a system approved by the responsible Agency that will assure the violation does not recur.

EPA did consider the alternate approach of declaring that unpermitted wastes in a unit should be said to forever "taint" the cell (preventing a future finding of "physical" compliance for purposes of the off-site rule) if those wastes cannot be physically removed. Although this approach may have merit in situations where the unpermitted wastes pose a threat to health or the environment, the Agency believes that it would be contrary to the interests of effective operation of the off-site policy and effective operation of the CERCLA program, to prohibit any future use of such units by EPA in cases where no environmental or health threat has occurred.

The logic behind this interpretation is clear by example. In an incinerator were to accept and burn wastes not authorized by its permit, it will be deemed to be in violation. However, it may be infeasible to correct the consequences of that error, and indeed, there may be no environmental or health basis for attempting to expunge all physical traces of the violation. The appropriate remedy may be to issue a penalty and to require new procedures for reviewing waste types. However, it would not make good sense to state that the incinerator is forever unacceptable to receive CERCLA wastes, even after it has instituted proper management procedures and shown the Agency that it can safely handle wastes.

The fundamental purposes of the off-site rule are to ensure that the Agency uses environmentally sound facilities, and does not contribute to problem sites

(thereby subjecting EPA to increased potential liability). Neither of these purposes would be frustrated by a policy that allowed wastes to be sent to a facility that EPA has determined to have returned to sound operation, and that is found to be equipped to handle additional wastes safely and properly. A contrary approach would make many environmentally sound waste disposal facilities unavailable to the Agency, thereby limiting the Agency's options for proper waste disposal.

The responsible Agency must verify the return to compliance through either a regularly scheduled inspection or, at its discretion, a special inspection, prior to determining acceptability. Facilities regaining acceptability should be notified in writing.

B. Release Criteria for Facilities Receiving Post-SARA Wastes

1. RCRA Subtitle C Facilities—Releases at Receiving Units

RCRA Subtitle C facilities receiving wastes resulting from post-SARA decision documents, with receiving units deemed unacceptable because of releases, may regain acceptability by eliminating those releases. In addition, they must control any contamination that occurred as a result of the release under a permit or correction action order approved under Subtitle C of RCRA.

2. RCRA Subtitle C Facilities—Releases at Non-Receiving Units

RCRA Subtitle C land disposal facilities deemed unacceptable because of releases occurring at other units, and RCRA Subtitle C treatment, storage, and permit-by-rule facilities deemed unacceptable because of environmentally significant releases at other units, may regain acceptability by entering into an enforceable agreement, with the responsible Agency, to investigate the problems.

3. Corrective Action Orders/Agreements

Acceptable agreements under Subtitle C of RCRA include a corrective action order under section 3008(h), section 7003 or section 3013; permit provisions under 40 CFR 264.100 or 264.101 (or appropriate authority in a State authorized for HSWA corrective action); and an order under an equivalent authority in a State authorized for HSWA corrective action.

Releases from any unit at a RCRA facility will be considered controlled by a corrective action program upon issuance of the order or permit containing the requirement to initiate and complete one or more of the

following: A RCRA Facility Investigation (RFI), a Corrective Measures Study, or Corrective Measures Implementation. This is consistent with both the RCRA and Superfund corrective action programs, where site study and release characterization is the first step in a series of actions designed to control releases. The facility will remain acceptable as long as it is in compliance with the terms of the order or permit, and it enters into future agreements for further corrective action activities, when necessary, except during periods of administrative or judicial challenges when a facility must make the requisite showing under 40 CFR 300.440(e) in order to remain acceptable.

4. Non-Subtitle C Facilities—Releases

Environmentally significant releases of hazardous waste, hazardous constituents, or hazardous substances from any unit of a facility regulated under other Federal laws (e.g., the Toxic Substances Control Act or Subtitle D of RCRA) or State laws under a Federally-delegated program, must be subject to corrective action mechanisms under those laws in order for the facility to be acceptable under this proposed rule. Such releases must be evaluated by the responsible Agency and must be determined either not to be environmentally significant or must be controlled by a corrective action program under the applicable statute. In the event that a release is discovered that has not been addressed by corrective action, the responsible Agency may determine that the facility is unacceptable to receive CERCLA wastes under this section.

Releases from units at non-Subtitle C facilities will be considered controlled upon issuance of an order or permit under the appropriate statute containing applicable corrective action requirements, subject again to 40 CFR 330.440(e).

5. Opportunity to Notify Agency of Return to Acceptability

The Agency recognizes the need to provide an opportunity for facilities to notify the responsible Agency when they believe they have returned to acceptability. This is necessary because it is possible a facility may return to physical compliance or complete corrective action earlier than anticipated.

Facilities that believe they have returned to acceptability under 40 CFR 330.440 may notify the responsible Agency in writing, explaining the measures taken to achieve acceptability. The responsible Agency shall endeavor

to review such requests for re-evaluation in a timely manner, and shall notify the facility in writing of its decision regarding the facility's acceptability.

C. Release Criteria for Facilities Receiving Pre-SARA Wastes

Under the May 1985 off-site policy, facilities with relevant conditions could regain acceptability to receive pre-SARA wastes by entering into an enforceable agreement under the applicable statute to correct the relevant conditions. The Agency believes this standard of action is consistent with the intent of the off-site policy and of Congress, and is continuing its application as the standard facilities with relevant conditions must meet to regain acceptability to receive pre-SARA wastes.

D. Opportunities for Review of Unacceptability Determinations in Place on November 13, 1987

Under the May 1985 policy, facilities determined to be unacceptable to receive CERCLA wastes were provided with written notice and were generally afforded informal opportunities to comment on the determination (the latter step was not required by the policy). Although the Agency believes that these steps represented adequate procedural safeguards for facilities seeking to receive CERCLA wastes, EPA decided in its November 1987 revised policy to provide an additional opportunity for review, in light of the revised procedures set out in that policy, for facilities with unacceptability determinations already in place on the policy's effective date (November 13, 1987). EPA is repeating that offer here.

Any such facility that wishes to meet with the responsible Agency to discuss the basis for a violation or release determination and its relevance to the facility's ability to receive CERCLA wastes, may request an informal conference with or submit written comments to the responsible Agency at any point up to the 60th day after publication of the proposed rule in the Federal Register (i.e., until January 30, 1989). Such a meeting should take place within 30 calendar days of the request. If the responsible Agency does not find the information presented to be sufficient to support a finding of acceptability to receive CERCLA wastes, then it will inform the facility in writing that the unacceptability determination will continue to be effective. The facility may, within 10 calendar days after hearing from the responsible Agency after the informal conference or the submittal of written comments, petition

the EPA Regional Administrator or appropriate State official for reconsideration. The Regional Administrator or State official may use discretion in deciding whether to conduct such a review.

However, review of unacceptability determinations that were already in place on November 13, 1987, will not stay the effect of the unacceptability determinations during the period of review. A stay would potentially allow the transfer of CERCLA cleanup wastes to facilities where the Agency has made detailed findings of violations or releases; this would be contrary to the Agency's mission to protect human health and the environment.

VIII. Manifest Requirements

Any off-site transfer of CERCLA waste that is also RCRA hazardous waste must comply with the RCRA manifest requirements in 40 CFR Part 262. EPA, or the party undertaking the on-site activity, is considered to be the "generator" and must ensure the proper filing of the Uniform Hazardous Waste Manifest.

IX. Regulatory Analysis

A. Regulatory Impact Analysis

Proposed regulations must be classified as major or minor to satisfy the rulemaking protocol established by Executive Order 12291. According to Executive Order 12291, major rules are regulations that are likely to result in:

- (1) An annual effect on the economy of \$100 million or more; or
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this proposed regulation is not a major rule under Executive Order 12291 because it will not result in any of the impacts identified above. Today's proposal codifies an Agency policy that has been in effect since May of 1985 and largely mirrors a revision of that policy that has been in effect since November of 1987. This proposal contains criteria that EPA will use to determine where it will send waste from Superfund cleanups. The proposal does not regulate or otherwise impose any new requirements on commercial waste

handlers. It does require them to be in compliance with applicable regulations the Agency already enforces. As a result of this proposal some facilities may choose to initiate corrective action sooner than if they waited for the corrective action conditions in their final operating permit. However, regardless of the requirements of this rule, under the authority of section 3008(h) of RCRA, EPA already compels corrective action at RCRA interim status facilities with known or suspected releases. The proposal, then, should not result in increased long-term costs to the commercial waste handling industry.

The requirement to send CERCLA waste only to facilitate acceptable under this rule may, in some cases, increase the transportation costs at Superfund cleanups conducted by EPA, the States and responsible parties under enforcement orders. This cost increase could result from decisions to ship waste a greater distance in order to reach an acceptable facility. The Agency has considered the distribution of commercial facilities which have historically handled CERCLA waste and their current acceptability status and has identified a fairly even distribution of acceptable facilities across the country, with the exception of the Rocky Mountain and Northern Plain States. These areas, however, have a sparse distribution of commercial facilities regardless of status. As a result, EPA has concluded that the requirement to use only facilities acceptable under the proposal will not result in increases in transportation costs to EPA, States, or responsible parties conducting Superfund cleanups that exceed \$100 million annually. In addition, EPA believes that the majority of the facilities suitable for storage, treatment or disposal of CERCLA waste are either currently acceptable or are scheduled for corrective action to address releases (which will make them acceptable) through a HSWA permit or order under RCRA section 3008(h) authority.

Similarly, codification of the existing policy through this rule should not cause major increases in costs or prices for consumers, individual industries or geographic regions. The increased cost to the Federal government of waste transportation at Superfund cleanups as discussed previously, is not believed to be major. State and local government expenditures in Superfund cleanups are fixed at a constant proportion of the total cost of cleanup and should not be increased significantly by the proposal.

Codification of the Agency's off-site policy through this rule should not result in less business to the commercial waste

handling industry since EPA believes it will not generally affect the decision to store, treat or dispose of Superfund waste off-site. For this reason the Agency believes the proposal will cause no significant adverse effects on employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The proposal should not create significant adverse effects on competition since CERCLA waste constitutes an insignificant portion of the tonnage handled by the U.S. commercial waste handling industry. In any event, the industry is characterized by a small number of large companies which operate most of the major facilities that historically have handled CERCLA waste. Information collected by the Agency on the number of acceptable and unacceptable facilities indicates a relatively equal distribution of acceptable facilities among the major operators.

On the benefits side, the Agency believes the existing off-site policy and its codification through this rule will provide significant environmental benefits through the incentive to the commercial waste management industry to remain in compliance with applicable regulations and to address environmental releases sooner than might normally be required by the Agency during the permit issuance process. Most importantly, EPA believes that responsible selection of commercial storage, treatment and disposal facilities now, may avoid the need for future Superfund cleanups of facilities being used to dispose of today's wastes.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., at the time an Agency publishes any proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's proposed rule describes procedures for determining the acceptability of a facility for off-site management of CERCLA wastes. It does not impose any additional requirements on or affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental

relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: November 19, 1988.

Lee M. Thomas,
Administrator.

Part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES CONTINGENCY PLAN

1. The authority citation for Part 300 is amended to read as follows:

Authority: Sections 104(c)(3), 104(d)(1), 105, and 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9604(c)(3), 9605, 9621(d)(3)), section 311(c)(2) of the Clean Water Act (33 U.S.C. 1321(c)(2)); Executive Order 12580 (52 FR 2933, January 29, 1987); and Executive Order 11735 (38 FR 21243, August 1973).

2. Section 300.440 is added to Part 300 to read as follows:

§ 300.440 Procedures for planning and implementing off-site response actions.

(a) *Applicability.* (1) This section applies to any remedial or removal action involving the off-site transfer of any hazardous substance, pollutant, or contaminant as defined under CERCLA section 101(14) and (33) ("CERCLA waste") that is conducted by EPA, States, private parties, or other Federal agencies, that is Fund-financed and/or is under any CERCLA authority, including cleanups at Federal facilities under section 120 of CERCLA, or under section 311 of the Clean Water Act (except for cleanup of petroleum products). Applicability extends to those actions taken jointly under CERCLA and another authority.

(2) In cases of removal actions under CERCLA, enforcement actions taken as removal actions under CERCLA, or response actions under section 311 of the Clean Water Act where the release poses an immediate and significant threat to human health and the environment, the On-Scene Coordinator (OSC) may determine that it is necessary to transfer CERCLA waste off-site without following the requirements of this section.

(3) This section applies to wastes from cleanup actions based on CERCLA decision documents signed or consent decrees lodged after October 17, 1986 ("post-SARA") as well as those based on CERCLA decision documents signed and consent decrees lodged prior to

October 17, 1986 ("pre-SARA"). However, post-SARA actions are subject to the acceptability criteria in § 300.440(b)(1) and (2), whereas pre-SARA actions are subject to acceptability criteria in § 300.440(b)(1) and (3).

(4) The responsible Agency must determine that any facility selected for the treatment, storage, or disposal of CERCLA waste is acceptable under this section. The responsible Agency is EPA, unless the selected facility is located in a State which EPA has authorized under section 3006 of RCRA for a hazardous waste program equivalent to section 3004(u) of RCRA and has entered into a Core Program Cooperative Agreement under CERCLA section 104(a)(1)(A) with the EPA. In the latter case, the authorized State is the responsible Agency. However, EPA remains the responsible Agency when the CERCLA waste is not RCRA hazardous waste, but is PCB waste and its disposal is subject to EPA approval under the Toxic Substances Control Act. A facility is acceptable until the responsible Agency notifies the facility otherwise.

(5) The transfer of waste samples to an off-site laboratory for characterization is not subject to this rule. However, the subsequent transfer of the samples is subject to the requirements of this rule.

(b) *Acceptability criteria.*—(1) *Facility compliance.* (i) A facility will be deemed in compliance for the purpose of this rule if there are no relevant violations at or affecting the unit or units receiving CERCLA waste:

(A) For treatment to standards specified in 40 CFR Subpart D, including any pre-treatment or storage units used prior to treatment;

(B) For treatment to substantially reduce its mobility, toxicity or persistence in the absence of a defined treatment standard, including any pre-treatment or storage units prior to treatment; or

(C) For storage or ultimate disposal of CERCLA waste not treated to the previous criteria.

(ii) Relevant violations include significant deviations from regulations, compliance order provisions, or permit conditions designed to: ensure that hazardous waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases; or compel corrective action for releases. Criminal violations which result in indictment are also relevant violations. A determination of acceptability will be based on compliance (i.e., absence of

relevant violations) with the following requirements:

(A) Applicable subsections of sections 3004 and 3005 of RCRA or, where applicable, other Federal laws (such as the Toxic Substances Control Act and Subtitle D of RCRA); and

(B) Applicable sections of State environmental laws.

(C) In addition, land disposal units at RCRA Subtitle C facilities receiving RCRA hazardous waste from response actions authorized or funded under CERCLA must be in compliance with applicable RCRA section 3004(o) minimum technology requirements. Exceptions may be made only if the unit has been granted a waiver from these requirements.

(2) *Releases.* (i) Release is defined in § 300.6 of this Part. Releases under this section do not include *de minimis* releases, or releases permitted under Federal programs or under Federal programs delegated to the States (Federally permitted releases are defined in § 300.6), except to the extent that such releases are found to pose a threat to human health and the environment.

(ii) Releases from units at a facility designated for off-site transfer of CERCLA waste resulting from post-SARA decision documents must be addressed as follows:

(A) *Receiving units at RCRA Subtitle C facilities.* CERCLA wastes resulting from post-SARA decision documents may be transferred to an off-site unit regulated under Subtitle C of RCRA, including a facility regulated under the permit-by-rule provisions of 40 CFR 270.60(a), (b) or (c), only if that unit is not releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil or air.

(B) *Other units at RCRA Subtitle C land disposal facilities.* CERCLA wastes resulting from post-SARA decision documents may not be transferred to a RCRA Subtitle C land disposal facility where a non-receiving unit is releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil, or air unless that release is addressed by an enforceable agreement for corrective action under Subtitle C of RCRA or other applicable Federal or State authority. For purposes of this section, a RCRA "land disposal facility" is any RCRA facility at which a land disposal unit is located, regardless of whether a land disposal unit is the receiving unit.

(C) *Other units at RCRA Subtitle C treatment, storage, and permit-by-rule facilities.* For RCRA Subtitle C treatment, storage and permit-by-rule

facilities, releases of any hazardous waste, hazardous constituent, or hazardous substance from non-receiving units at facilities receiving CERCLA wastes resulting from post-SARA decision documents must be evaluated to determine if they pose a significant threat to public health or the environment. The facility should not be used if the responsible Agency determines that such a threat exists unless that release is addressed by an enforceable agreement for corrective action under Subtitle C of RCRA or other applicable Federal or State authority.

(D) *All other facilities.* CERCLA wastes resulting from a post-SARA decision document should not be transferred to any unit at a non-Subtitle C facility if the responsible Agency has information indicating that an environmentally significant release of hazardous substances has occurred at that facility. However, the facility may be used if the responsible Agency determines that the release is addressed by an enforceable agreement for corrective action under an applicable Federal or State authority.

(iii) Releases are not considered to be "controlled" or "addressed" for the purpose of this section during the pendency of administrative or judicial challenges to corrective action programs, unless the facility has made the requisite showing under § 300.440(e).

(3) *Relevant conditions.* CERCLA wastes resulting from pre-SARA decision documents shall not be transferred to an off-site facility if there are environmental conditions at the facility that pose a significant threat to public health, welfare, or the environment, or affect the satisfactory operation of the facility.

(c) *Basis for determining acceptability.* (1) In order to determine compliance status, a facility must have received an appropriate facility compliance inspection within six months prior to receiving the CERCLA waste. For non-Subtitle C facilities, and for all facilities receiving wastes from pre-SARA actions, this inspection should also serve to determine if there are any environmentally significant releases or relevant conditions.

(2) In order to assess the status of releases at facilities being considered to receive wastes resulting from post-SARA decision documents, RCRA Subtitle C facilities should have undergone a RCRA Facility Assessment (RFA) or an equivalent facility-wide investigation before receiving waste; where a determination of release has already been made, the facility must be

under a corrective action program which includes a facility-wide investigation before it may receive CERCLA waste. In addition, RCRA Subtitle C land disposal facilities must have received a comprehensive ground-water monitoring evaluation (CME) or operation and maintenance (O&M) inspection within the year preceding the determination of acceptability.

(d) *Determination of unacceptability.*

(1) Upon initial determination by the responsible Agency that a facility being considered for the off-site transfer of any CERCLA waste does not meet the criteria for acceptability stated in § 300.440(b), the responsible Agency shall notify the owner/operator of such facility of its unacceptability status. The notice will be sent by certified and first-class mail, return receipt requested. The certified notice, if not acknowledged by the return receipt card, should be considered to have been received by the addressee if properly sent by regular mail to the last address known to the responsible Agency.

(2) The notice shall state that based on available information from an RFA, inspection, or other data sources, the facility has been found not to meet the requirements of § 300.440; cite the specific acts, omissions, or conditions which form the basis of these findings; and inform the owner/operator of the procedural recourse available under this regulation.

(3) The facility may continue to receive CERCLA waste for 60 calendar days after the date of issuance of the notice.

(4) If the owner or operator of the facility in question submits a written request for an informal conference with the responsible Agency within 10 calendar days from the issuance of the notice, the responsible Agency shall provide the opportunity for such conference no later than 30 calendar days after the date of the notice, if possible, to discuss the basis for the underlying violation or release determination, and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. If unacceptability is based on an inspection or enforcement action taken by the State, in the case where EPA issues the notice, a representative of the State may be present at the meeting. If no State representative is present, EPA shall notify the State of the outcome of the conference. An owner/operator may submit written comments by the 30th day after issuance of the notice, in addition to or instead of requesting an informal conference.

(5) If the owner or operator neither requests an informal conference nor

submits written comments, on the 60th day after the notice is issued, the facility immediately becomes unacceptable to receive CERCLA waste. The facility will remain unacceptable until such time as the responsible Agency notifies the owner or operator otherwise.

(6) If an informal conference is held or written comments are received, the responsible Agency will notify the owner/operator in writing whether or not the information provided is sufficient to support a determination of acceptability. Unless information provided by the owner/operator is sufficient to support a determination of acceptability, the facility becomes unacceptable on the 60th calendar day after issuance of the original notice of unacceptability.

(7) Within 10 days of hearing from the responsible Agency after the informal conference or the submittal of written comments, the owner/operator may request a reconsideration of the unacceptability determination by the EPA Regional Administrator or appropriate State official. Reconsideration may be by review of the record, by conference, or by other means deemed appropriate by the reviewing official; reconsideration does not automatically stay the determination beyond the 60-day period. The owner/operator will receive notice in writing of the decision of the RA or State official.

(8) The responsible Agency may decide to extend the 60-day period if it requires more time to review a submission. The responsible Agency shall notify the facility owner/operator in writing if it extends the 60 days.

(9) The responsible Agency may decide that a facility's unacceptability is immediately effective in extraordinary situations such as, but not limited to, emergencies at the facility or egregious violations. The responsible Agency shall notify the facility owner/operator of its immediate unacceptability.

(e) *Unacceptability during administrative and judicial challenges of corrective action decisions.* For a facility with releases that are subject to a corrective action permit, order, or decree, an administrative or judicial challenge to the corrective action (or to a permit modification calling for additional corrective action) shall not be considered to be part of a corrective action "program" controlling those releases and shall not act to stay a determination of unacceptability under this rule. However, such facility may remain acceptable to receive CERCLA waste during the pendency of the appeal or litigation if:

(1) It satisfies the responsible Agency that adequate interim corrective action measures will continue at the facility; or

(2) It demonstrates to the responsible Agency the absence of a need to take corrective action during the short-term, interim period.

Either demonstration may be made during the 60-day review period in the context of the informal conference and RA/State official reconsideration.

(f) *Re-evaluating unacceptability.* If, after notification of unacceptability and the opportunity to confer as described in § 300.440(d), the facility remains unacceptable, the facility can regain acceptability. A facility found to be unacceptable to receive CERCLA wastes based on relevant violations, releases, or relevant conditions may regain acceptability if the following conditions are met:

(1) *Judgment on the merits.* The facility has prevailed on the merits in an administrative or judicial challenge to the finding of noncompliance or uncontrolled releases upon which the unacceptability determination was based.

(2) *Relevant violations.* The facility has demonstrated to the responsible Agency its return to physical compliance for the relevant violations cited in the notice.

(3) *Releases.* (i) All releases from receiving units at RCRA Subtitle C facilities have been eliminated and prior contamination from such releases is controlled by a corrective action program approved under Subtitle C of RCRA.

(ii) All releases from other units at RCRA Subtitle C land disposal facilities are controlled by a corrective action program approved under Subtitle C of RCRA.

(iii) A RCRA Subtitle C corrective action program may be incorporated into a permit, order, or decree, including the following: a corrective action order under RCRA section 3008(h) or section 7003, a RCRA permit under 40 CFR 264.100 or 264.101, or a permit under an equivalent authority in a State authorized for corrective action under RCRA section 3004(u). Releases will be deemed controlled upon issuance of the order, permit, or decree which initiates and requires completion of one or more of the following: a RCRA Facility Investigation, a RCRA Corrective Measures Study, and/or Corrective Measures Implementation. The release remains controlled as long as the facility is in compliance with the order, permit, or decree, and enters into subsequent agreements for implementation of additional corrective action measures

when necessary, except during periods of administrative or judicial challenges, when the facility must make a demonstration under § 300.440(e) in order to remain acceptable.

(iv) All releases from other units at RCRA Subtitle C treatment and storage facilities must either be deemed by the responsible Agency not to pose a significant threat, or be controlled by a corrective action program as described in § 300.440(f)(3)(iii).

(v) Facilities with releases regulated under other applicable Federal laws, or

State laws under a Federally-delegated program may regain acceptability under this section if the releases are deemed by the responsible Agency not to pose a significant threat to human health or the environment, or if the facility enters into an enforceable agreement under those laws to conduct corrective action activities to control releases.

(4) *Relevant conditions.* Facilities with relevant conditions that are receiving CERCLA wastes resulting from pre-SARA decision documents may regain acceptability under this section by

entering into an enforceable agreement to correct the conditions under the applicable statute.

(5) An unacceptable facility may be reconsidered for acceptability whenever the responsible Agency finds that the facility fulfills the criteria stated in § 300.440(b). Upon such a finding, the responsible Agency shall notify the facility in writing.

[FR Doc. 88-27324 Filed 11-28-88; 8:45 am]

BILLING CODE 6560-50-M

Presidential Proclamations

**Tuesday
November 29, 1988**

Part IV

The President

**Proclamation 5914—National Book Week,
1988**

**Proclamation 5915—Vocational-Technical
Education Week, 1988**

**Proclamation 5916—To Amend
Proclamation 5908**

Part IV

The President

Production 2015 - National Book Week

Production 2015 - National Book Week

Education Week, 1991

Production 2015 - To Amend

Production 2015

Presidential Documents

Title 3—

Proclamation 5914 of November 23, 1988

The President

National Book Week, 1988

By the President of the United States of America

A Proclamation

"Books," Thoreau once wrote, "are the treasured wealth of the world, the inheritance of generations and nations." In the love of books and the accumulated learning they represent lie the heritage and the hope of mankind. For us in America, that love by tradition and experience has been a decisive force in our existence and development as a free people. We proclaimed it so for all eternity in the First Amendment to our Constitution, and we proved it so at the dawn of the American Revolution when we chose as our foremost weapon the printing press.

During National Book Week, we pause to recall all that books have had to do not only with the founding and building of this land, but also with the transmission of those ideas and practical achievements that form the basis of our culture. Published maps, journals, and accounts of explorers, adventurers, and missionaries inspired the early pioneers to follow them across new horizons of discovery in the Americas. Likewise, the writings of political philosophers and scholars from ancient times onward imparted wisdom and knowledge to the lovers of liberty who declared our country's independence. Another book, the Bible, gave them enduring inspiration and deep confidence in the transcendent value of their struggle.

Anyone who doubts the power or permanence of books need only look today at countries around the world where the mere composition, printing, binding, and distribution of a book is a prosecutable act of defiance against the state. Even the rulers of these regimes must secretly acknowledge the futility of their aims. For the printed word is an implacable enemy of tyranny, whether that tyranny comes in the form of official censorship by government or fashionable neglect by academia. In every society, the goals of education must include such a wide experience of the best books that intellectual independence and critical thinking become the natural assets of each citizen.

Our free society, then, must prize its libraries just as it values its liberties. We can all resolve during National Book Week to take stock of our own reading practices and our attentiveness to sharing books with others, especially the young. Technological change and specialized publications—electronic books, braille and large-print media for the visually impaired, recorded books and other forms—have greatly increased the accessibility of all kinds of literature. Promoting even broader dissemination of book learning, including efforts to achieve 100 percent literacy in our Nation, is the proper concern of all Americans. Truly we owe it to future generations to understand, preserve, and pass on the wisdom of the ages found only in books.

The Congress, by Senate Joint Resolution 342, has designated the period of November 28 through December 5, 1988, as "National Book Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 28 through December 5, 1988, as National Book Week, and I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-27645

Filed 11-28-88; 11:51 am]

Billing code 3195-01-M

Presidential Documents

Proclamation 5915 of November 23, 1988

Vocational-Technical Education Week, 1988

By the President of the United States of America

A Proclamation

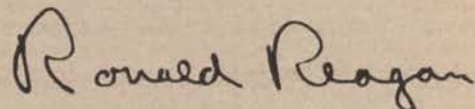
Over the years, our Nation has benefited greatly from persons who have developed their vocational and technical skills and used those skills in helping to build strong and vibrant communities. Today, America's industries and businesses are facing new challenges in a more competitive international environment, and to continue to prosper they must achieve a higher level of innovation and productivity than ever before. To assist in meeting this challenge, young people must have a firm foundation in the basic skills that will enable them to fill jobs that require advanced vocational and technical training.

Various studies have projected that the future job market will consist more and more of such technically intensive occupations. If our economy is to have a sufficient crop of candidates for these occupations, it must be able to rely upon a large and growing pool of trained vocational educators. Fortunately, there are dozens of State and national groups committed to quality education in vocational specialties, and these groups are attuned to economic trends and supportive of professional educators in the technical-vocational fields. General public awareness is important, too. During Vocational-Technical Education Week, all Americans can pause to consider the need for strong vocational education programs that enjoy the full support of our communities.

The Congress, by House Joint Resolution 572, has designated the period of November 28 through December 2, 1988, as "Vocational-Technical Education Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of November 28 through December 2, 1988, as Vocational-Technical Education Week, and I call upon the people of the United States to observe this event with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.



Presidential Documents

Proclamation 5916 of November 28, 1988

To Amend Proclamation 5908

By the President of the United States of America

A Proclamation

In order to amend paragraph A of Proclamation 5908 of November 18, 1988, "To Amend the Quantitative Limitations on Imports of Certain Cheeses," I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States of America, including Section 701 of the Trade Agreements Act of 1979, Section 604 of the Trade Act of 1974, and Section 1204(b) of the Omnibus Trade and Competitiveness Act of 1988, do hereby proclaim that:

In paragraph A of Proclamation 5908, the tabular material which reads:

"Uruguay 943,569 482,000"

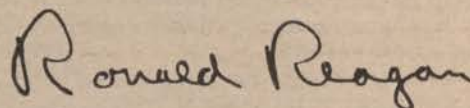
is deleted, and the tabular material

"Uruguay 943,569 428,000"

is inserted in lieu thereof.

This Proclamation shall be effective November 18, 1988.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.



Reader Aids

Federal Register

Vol. 53, No. 229

Tuesday, November 29, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43999-44166	1
44167-44372	2
44373-44584	3
44585-44852	4
44853-45058	7
45059-45248	8
45249-45442	9
45443-45750	10
45751-45880	14
45881-46078	15
46079-46426	16
46427-46600	17
46601-46842	18
46843-47178	21
47179-47490	22
47491-47656	23
47657-47798	25
47799-47926	28
47927-48242	29

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
5779 (See Proc. 5911)	47413
5787 (See Proc. 5911)	47413
5808 (See Proc. 5911)	47413
5892	44167
5893	44169
5894	45059
5895	45061
5896	45063
5897	45239
5898	45241
5899	45243
5900	45251
5901	45253
5902	45255
5903	45439
5904	45441
5905	45443
5906	45881
5907	45883
5908	47485, 48241
5909	47487
5910	47489
5911	47413
5912	47519
5913	47521
5914	48237
5915	48239
5916	48241

Executive Orders:

1557 (Revoked by PLO 6688)	46871
7127 (Revoked in part by PLO 6688)	46871
10421 (Revoked by EO 12656)	47491
11490 (See EO 12657)	47513
11490 (Revoked by EO 12656)	47491
12148 (Amended by EO 12656)	47491
12241 (Amended by EO 12656)	47491
12655	45445
12656	47491
12657	47513
12658	47517

Administrative Orders:

Memorandums:	
Oct. 26, 1988	43999
Notices:	
Nov. 8, 1988	45750
Presidential Determinations:	
No. 89-1 of Oct. 3, 1988	44373
No. 89-2 of Oct. 5, 1988	45249

No. 89-3 of Oct. 13, 1988	44375
No. 89-4 of Oct. 20, 1988	44377
No. 89-5 of Oct. 24, 1988	46601
No. 89-6 of Oct. 31, 1988	46427

5 CFR

330	45065
351	45065
550	45885
630	45886
890	45069
1200	46843
1201	47927

7 CFR

2	45257, 46429
26	47657
250	46079
272	44171
275	44171
301	44172, 45071, 46844
354	47799
405	46845
440	46847
441	46847
451	46848, 46849
454	46850
713	47658
760	44001
770	47658
780	45073
905	47660
910	44002, 44585, 45751, 45753, 46603, 47800

928	44551
984	45754
1099	44853
1405	47658
1413	47658
1421	47658
1430	45887
1470	47658
1610	44173
1736	44174
1944	44176
1951	44177, 45755
1956	45887
1980	45257

Proposed Rules:

Ch. III	45484
1c	45661, 46745
26	47720
34	44591
52	45908
300	44199
301	45274
907	44925
908	44925

919.....44407
948.....44591
971.....45767
989.....45100
1076.....46875
1106.....44593
1150.....47958
1709.....44594
1715.....47820
1718.....44887
1750.....47394
1751.....47394
1770.....47959
1951.....44013
3015.....44716
3016.....44716

8 CFR

214.....46850
274a.....46850

9 CFR

11.....44585, 45854
77.....46080
78.....44179
307.....46429
308.....46429
310.....45888
327.....47927
381.....46855

Proposed Rules:

54.....44200
301.....44818
302.....44818
303.....44818
305.....44818
306.....44818
307.....44818
308.....44818
312.....44818
314.....44818
316.....44818
317.....44818
318.....44818
320.....44818
322.....44818
325.....44818
327.....44818
331.....44818
335.....44818
381.....44818

10 CFR

2.....45447, 47662
50.....45890
55.....46603
70.....45447
73.....45447
1013.....44379

Proposed Rules:

2.....44411
19.....45768
20.....44014
21.....44594
50.....44594, 47822
430.....47546
600.....44716
745.....45661, 46745
785.....44602

12 CFR

202.....45756
203.....47662
229.....44324, 44325, 47524
329.....47523
336.....47929

552.....44394
571.....45454
574.....47941
614.....45076
615.....45076
618.....45076

Proposed Rules:

Ch. V.....44436
229.....44335, 44343, 44352,
46976
354.....47723
522.....44437
563.....45484
613.....44438
614.....44438, 45101
615.....44438
616.....44438
618.....44438
619.....44438

13 CFR

121.....47663
Proposed Rules:
125.....47546
143.....44716

14 CFR

21.....47394, 47664
25.....47664
36.....47394
39.....44156, 44160, 44180,
47670, 47672, 45892-45897,
46333-46444, 46605, 46862-
46867, 47179, 47180, 47942-
47944
61.....47024
63.....47024
65.....47024
67.....44166
71.....44145, 44586, 44587,
45076, 45186, 45757, 46605,
46868, 47181, 47182
73.....45258, 45758
95.....47945
97.....45077, 47183
99.....44182
121.....44182, 47024
135.....47024, 47362
139.....44588
145.....47362
150.....44554
156.....46869
217.....46284
241.....46284
1203.....45259
1214.....47949

Proposed Rules:

Ch. I.....44202, 45771
21.....45771, 46622
25.....45771, 46622
39.....44163, 44610, 44612,
45911, 46460-46473, 46876,
46877, 47969
71.....44613, 45274, 47222,
47223, 47970
73.....45187
1230.....45661, 46745
1270.....44716

15 CFR

771.....45899
773.....45899
774.....45899
775.....44002
779.....44855
Proposed Rules:
Ch. VII.....45912

24.....44716
27.....45661, 46745
774.....46878

16 CFR

429.....45455
802.....47524
1306.....46828
1500.....46828

Proposed Rules:

13.....44014, 44888
303.....45913
439.....44456
801.....47829
802.....47829
803.....47829
1028.....45661, 46745
1031.....44892
1032.....44892

17 CFR

30.....44856
211.....47800

Proposed Rules:

1.....46089
230.....44016
270.....45275

18 CFR

4.....47525
11.....45758
154.....44004, 45758
157.....44004, 45758
260.....44004, 45758, 45899
271.....44007
284.....44004, 45758
381.....44182
382.....46445
385.....44004, 45758, 47949
388.....44004, 45758
410.....45260
420.....45260

Proposed Rules:

292.....44458

19 CFR

4.....46081
111.....44186
113.....44186, 45901
353.....47916
354.....47916
355.....47916

Proposed Rules:

4.....44459
10.....45485
101.....44459, 46623
113.....45917
123.....44459
141.....45485
148.....44459
152.....46625, 46626
177.....46474
210.....44463, 44900

20 CFR

361.....45261
365.....44976
404.....44551
Proposed Rules:
10.....47829
218.....44477
404.....45186, 46628
410.....46628
416.....45186, 46628
422.....46628

655.....46093, 46187

21 CFR

Ch. I.....44861
177.....44009, 47184
178.....44397, 47185, 47525
182.....44862
184.....44862
312.....44144
314.....44144
520.....45759
522.....45759
558.....44009
872.....46040
874.....46040
878.....46040
884.....46040
886.....46040
888.....46040
892.....46040

Proposed Rules:

50.....45678, 46746
56.....45678, 46746
103.....45854
182.....44904
184.....44904
310.....46204
331.....46190
341.....45774
343.....46204
357.....46194
369.....46204
510.....46976
801.....44551

22 CFR

502.....45079, 47674
Proposed Rules:
34.....46880
135.....44716
192.....47970
225.....45661, 46745
226.....44716
518.....44716

24 CFR

24.....45903
235.....46084
570.....44186
885.....45265
904.....44876
905.....44876
913.....44876
960.....44876
966.....44876

Proposed Rules:

14.....44992
60.....45661, 46745
85.....44716
100.....44992
103.....44992
104.....44992
105.....44992
106.....44992
109.....44992
110.....44992
115.....44992
121.....44992
280.....45216
813.....44288
885.....44288
888.....44616

25 CFR

102.....44010

26 CFR			
301.....	47675		
Proposed Rules:			
1.....	45917, 45942		
601.....	44716		
27 CFR			
250.....	45266		
275.....	45266		
Proposed Rules:			
5.....	47224		
28 CFR			
2.....	45903, 46869, 47186, 47187		
31.....	44366, 44370		
Proposed Rules:			
2.....	48950		
46.....	45661, 46745		
66.....	44716		
29 CFR			
516.....	45706, 46530		
530.....	45706, 46530		
1910.....	45080, 47188		
1978.....	47676		
2610.....	45904, 47901		
2676.....	45906		
Proposed Rules:			
97.....	44716		
524.....	45657		
525.....	45657		
529.....	45657		
1470.....	44716		
1915.....	48092, 48111, 48130, 48150, 48168, 48182		
1926.....	45102		
30 CFR			
15.....	46748		
56.....	44588		
57.....	44588		
75.....	46768		
206.....	45082, 45760		
700.....	44356		
701.....	45190, 46976, 47378		
773.....	44144, 44694		
780.....	45190, 46976		
784.....	45190, 46976		
785.....	47384		
815.....	45190, 46976		
816.....	45190, 46976		
817.....	45190, 46976		
827.....	47384		
914.....	45459, 47950		
Proposed Rules:			
50.....	45878		
56.....	45487		
57.....	45487		
206.....	47829		
914.....	47224		
931.....	44202		
935.....	47225		
31 CFR			
500.....	44397		
515.....	44398, 47526		
Proposed Rules:			
103.....	45774, 46634		
32 CFR			
95.....	45085		
159.....	44877		
199.....	45461		
356.....	46446		
651.....	46322		
706.....	45269		
1293.....	45462		
Proposed Rules:			
199.....	44909		
219.....	45661, 46745		
279.....	44716		
806b.....	45776		
863.....	45777		
33 CFR			
110.....	44399		
117.....	46448, 46870		
165.....	44878		
334.....	47802, 47952		
Proposed Rules:			
117.....	44038, 46885		
151.....	44617		
155.....	44617		
158.....	44617, 46977		
334.....	47226		
34 CFR			
316.....	45730		
318.....	45730		
790.....	47953		
Proposed Rules:			
74.....	44716		
80.....	44716		
97.....	45661, 46745		
237.....	46072, 47977		
250.....	46404		
251.....	46411		
252.....	46404		
253.....	46404		
254.....	46404		
255.....	46404		
256.....	46404		
257.....	46404		
258.....	46404		
280.....	45874		
307.....	47466		
659.....	46416		
757.....	44578		
758.....	44578		
36 CFR			
Proposed Rules:			
251.....	44144		
1206.....	44716		
1207.....	44716		
1250.....	44203		
1254.....	44203		
37 CFR			
1.....	47685, 47803		
38 CFR			
3.....	45906, 46606		
17.....	46606		
36.....	44400		
Proposed Rules:			
1.....	45944		
3.....	46634, 46635		
16.....	45661, 46745		
17.....	47726		
43.....	44716		
39 CFR			
111.....	44187		
Proposed Rules:			
111.....	47830		
265.....	47977		
40 CFR			
52.....	44189, 44191, 45763, 46608, 47188, 47189, 47530, 47686, 47689, 47690		
60.....	45764, 46614, 47616, 47955		
61.....	45764, 46614, 46976		
81.....	47531		
180.....	44401, 46085, 47534, 47810, 47811		
185.....	44401		
186.....	44401		
228.....	44976		
253.....	46558		
261.....	47692		
262.....	45089		
280.....	44976		
281.....	44976		
704.....	46745		
712.....	46262		
716.....	45656, 46262, 46745		
Proposed Rules:			
26.....	45661, 46745		
30.....	44716		
33.....	44716		
52.....	44485, 44487, 44491, 44494, 44495, 44911, 45103, 45285, 46093-46096, 46636, 47547, 47548, 47730, 47978		
81.....	44912		
122.....	47632		
180.....	46098		
185.....	45946		
186.....	45946		
228.....	44617, 44620, 45519, 47979		
261.....	45106, 45112, 45523, 45948, 47731		
270.....	46474		
271.....	47737		
272.....	47737		
300.....	47980, 48218		
403.....	47632		
721.....	47228		
761.....	45288		
795.....	45289		
799.....	45289, 47228		
41 CFR			
101-40.....	47191		
101-44.....	47197		
101-45.....	47534		
201-1.....	47198		
201-2.....	47198		
201-23.....	47198		
201-24.....	47198		
42 CFR			
57.....	46546, 46552		
405.....	47199		
406.....	47199		
407.....	47199		
Proposed Rules:			
50.....	45781		
57.....	44496		
60.....	44913		
43 CFR			
4.....	47693		
3160.....	46798		
Public Land Orders:			
6688.....	46871		
6689.....	47955		
Proposed Rules:			
12.....	44716		
2200.....	45782		
3190.....	47904		
44 CFR			
8.....	47210		
11.....	47210		
63.....	44193		
64.....	44193, 46449, 47694, 47695, 47697		
65.....	47812, 47813		
67.....	47814		
Proposed Rules:			
13.....	44716		
67.....	44915, 46478, 47831		
221.....	47232		
45 CFR			
5.....	47697		
303.....	47708		
801.....	45247		
Proposed Rules:			
3.....	46886		
46.....	45661, 46745		
74.....	44716		
92.....	44716		
603.....	44716		
670.....	45119		
690.....	45661, 46745		
1157.....	44716		
1174.....	44716		
1184.....	44716		
1234.....	44716		
1304.....	47235		
1305.....	47235		
1308.....	47235		
2015.....	44716		
46 CFR			
Ch. I.....	46871		
4.....	47064		
5.....	47064		
16.....	47064		
31.....	44010		
70.....	44010		
90.....	44010		
107.....	44010		
188.....	44010		
581.....	44879		
Proposed Rules:			
25.....	44617		
221.....	44206		
390.....	45783, 46977		
585.....	44039		
587.....	44039		
588.....	44039		
47 CFR			
0.....	47535		
1.....	44195, 44196		
13.....	46454		
15.....	46615		
22.....	47212		
43.....	44196, 47817		
64.....	47535		
73.....	44197, 44198, 44404, 44405, 45094, 45095, 45479- 45482, 46085-46087, 47213		
76.....	46615		
80.....	46454		
90.....	44144		
95.....	44144, 47711		
Proposed Rules:			
22.....	44207		
69.....	47836		
73.....	44208-44210, 44502- 44504, 45127, 45523, 45524, 45948, 46099, 47235		
80.....	44210		
90.....	45128		

97..... 47738

48 CFR

201..... 46455
215..... 46455
216..... 46455
227..... 44975
242..... 46455
245..... 46455
247..... 46455
252..... 44975
253..... 46455
307..... 44551
332..... 44551
852..... 46872
1828..... 45095
1831..... 47956
1852..... 45095
2401..... 46532
2402..... 46532
2406..... 46532
2409..... 46532
2412..... 46532
2413..... 46532
2414..... 46532
2415..... 46532
2416..... 46532
2419..... 46532
2422..... 46532
2424..... 46532
2426..... 46532
2427..... 46532
2432..... 46532
2434..... 46532
2437..... 46532
2442..... 46532
2446..... 46532
2451..... 46532
2452..... 46532
2453..... 46532

Proposed Rules:

14..... 46792
15..... 46792
28..... 44564
47..... 45742
52..... 44564, 45742, 46792
53..... 44564
512..... 47551
546..... 47551
552..... 45293, 47551
932..... 45294
952..... 45294

49 CFR

40..... 47002
199..... 47084
217..... 47102
219..... 47102, 47819
387..... 47542
390..... 47542
391..... 47134, 47542
394..... 47134
395..... 44588, 47542
653..... 47156
1004..... 47219
1041..... 47219
1042..... 47219
1140..... 46087
1152..... 45765
1201..... 46619

Proposed Rules:

Ch. II..... 47554
11..... 45661, 46745
18..... 44716
171..... 45868
172..... 45525, 45868

173..... 45525, 45868
174..... 45868
175..... 45868
176..... 45868
177..... 45868
178..... 45868
179..... 45868
229..... 47557
571..... 44211, 44623, 44627,
45128, 47982
574..... 44632
575..... 45527
1135..... 47558
1152..... 47559

50 CFR

17..... 45858, 45861
20..... 44589, 44695
380..... 46872
642..... 45097, 47718
644..... 45098
655..... 45784
658..... 45270, 46745
663..... 47956
672..... 44011
675..... 47544

Proposed Rules:

16..... 45788
17..... 45788, 46479
18..... 45788
20..... 45296
33..... 44043
611..... 44047, 46482, 46890,
47993, 47998
646..... 44975
651..... 44975, 45301, 47299
652..... 48002
655..... 45854
663..... 46890
672..... 47993
675..... 47998

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List November 25, 1988